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TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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No. 387

RECONSTRUCTION FINANCE CORPORATION,  
PETITIONER

vs.

BANKERS TRUST COMPANY, TRUSTEE

No. 388

RECONSTRUCTION FINANCE CORPORATION,  
PETITIONER

vs.

BANKERS TRUST COMPANY, TRUSTEE

---

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---

PETITION FOR CERTIORARI FILED SEPTEMBER 10, 1942  
CERTIORARI GRANTED OCTOBER 26, 1942

**SUPREME COURT OF THE UNITED STATES**

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[fol. 1] (Notice of Appeal Filed in District Court.)

(Filed July 28, 1941.)

In the District Court of the United States,  
Eastern Division, Eastern Judicial  
District of Missouri.

In the Matter of

St. Louis-San Francisco Railway  
Company,

Debtor.

In Proceedings  
for the  
Reorganization  
of a Railroad.  
No. 7004

Notice is hereby given that Reconstruction Finance Corporation, intervener in the above entitled proceeding, appeals to the United States Circuit Court of Appeals for the Eighth Circuit from the order of Honorable George H. Moore, Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, entered herein on June 30, 1941, finding that section 77 (c) (12) of the Bankruptcy Act is not applicable to the Bankers Trust Company, Trustee, with respect to its claim for compensation, and allowing compensation and expenses to Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, in the total sum of \$26,792.16, on the petition of Bankers Trust Company, Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, for compensation and expenses rendered by it and its attorneys.

C. M. CLAY,  
Washington, D. C.,

ROBERT D. EVANS,  
St. Louis, Missouri;

Attorneys for Reconstruction Finance  
Corporation.

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[fol. 2] (Docket Entry Showing Mailing of Notice of Appeal  
Filed in District Court to Counsel for Appellee.)

July 28, 1941.

Notice of appeal of Reconstruction Finance Corporation, intervenor, to United States Circuit Court of Appeals, 8th Circuit from order of Court entered herein June 30, 1941, allowing compensation and expenses to Bankers Trust Co., as corporate trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Ry. Co., bearing attached thereto acknowledgment of service by the respective attorneys for Bankers Trust Co. and J. M. Kurn et al Trustees of St. Louis-San Francisco Ry. Co., debtor, filed.

[fol. 3]

(Agreed Statement of Facts.)

(Filed October 10, 1941.)

1. In accordance with the provisions of Rule 76 of the Rules of Civil Procedure, it is agreed by and between Reconstruction Finance Corporation and Bankers Trust Company, as Corporate Trustee under Refunding Mortgage of Kansas City, Fort Scott & Memphis Railway Company, for the purpose of the appeal taken by the Reconstruction Finance Corporation from Order No. 290, dated June 30, 1941, that the following are the facts of the case and show how the question arose and was decided in the District Court.

2. The St. Louis-San Francisco Railway Company, a Missouri railroad corporation, engaged in interstate commerce (hereinafter sometimes referred to as "Frisco"), on May 16, 1933, filed its petition under the provisions of Section 77 of the Bankruptcy Act in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, which said petition was by the Court approved May 17, 1933. Thereafter the Court appointed James M. Kurn and John G. Lonsdale Trustees who, as such, have since continued to act as Trustees in the operation of such railroad; that part of the system of railroad of the St. Louis-San Francisco Railway Company is what formerly was the Kansas City, Fort Scott & Memphis

Railway Company. The Bankers Trust Company, a corporation organized and existing under the banking laws of the State of New York, is the successor Corporate Trustee under the Refunding Mortgage covering the line of rail- [fol 4] road and certain other property of the said Fort Scott & Memphis Railway Company.

3. December 30, 1940, the District Court handed down its order respecting petitions for compensation and expenses, being Order No. 242, as follows:

Order #242, Shown on Folio Page 8.

4. On February 15, 1941, Bankers Trust Company, as Corporate Trustee, filed its Petition No. 266, dated February 11, 1941, for compensation and expenses, as follows:

Petition #266, Shown on Folio Page 20.

5. On February 15, 1941, Bankers Trust Company, as Corporate Trustee, filed its Petition No. 267, dated February 13, 1941, for allowance of compensation and expenses, which said petition was by the Clerk transmitted to the Interstate Commerce Commission for the fixing of maximum limits.

6. Said petition included all of Petition No. 266 and the following:

Petition #267, Shown on Folio Page 98.

7. Thereafter the Court on oral motion by counsel for Bankers Trust Company set Petition No. 266 for hearing on April 4, 1941. On that day the petition coming on for argument was opposed by counsel for the Frisco Trustees and by the Reconstruction Finance Corporation who had been permitted to intervene in the St. Louis-San Francisco reorganization proceedings on the 7th day of July, 1934, by Order No. 82A, reading as follows:

Order 82-A, Shown on Folio Page 103.

8. The positions taken at the hearing on April 4, 1941, by the Trustees of the St. Louis-San Francisco Railway Company and by Reconstruction Finance Corporation and taken by brief filed by Reconstruction Finance Corporation were: first, that those of the services rendered by

[fol. 5] Bankers Trust Company and its counsel for which an allowance of compensation and expenses is petitioned which were rendered during the course of Section 77 proceedings were rendered "in connection with the proceedings and plan"; second, that Section 77 (c) (12) of the Bankruptcy Act as amended includes all applications for allowance of compensation and expenses in connection with the proceedings and plan and by express language includes such allowances to "trustees under indentures"; and, third, that Section 77 (c) (12) is a valid enactment and constitutional and that the constitutional questions were prematurely raised.

9. Thereafter on June 30, 1941, the District Court entered its order, being Order No. 290, allowing said compensation and expenses, said order being as follows:

Order #290, Shown on Folio Page 104.

10. This appeal followed.
11. (Here copy notice of appeal with filing date.)
12. (Here copy statement of points to be relied on.)

RECONSTRUCTION FINANCE CORPORATION,

By RUSSELL L. SNODGRASS,  
ROBERT D. EVANS.

BANKERS TRUST COMPANY, as Corporate  
Trustee under Refunding Mortgage of Kansas,  
City, Fort Scott & Memphis Railway Company,

By RHODES E. CAVE,

Approved:

GEO. H. MOORE,  
U. S. District Judge.

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[fol. 6] (Statement of Points to be relied on filed in U. S. District Court.)

(Filed October 10, 1941.)

Comes now Reconstruction Finance Corporation and, pursuant to Rule 75(d) of the Rules of Civil Procedure, files this its statement of the points to be relied on on its appeal from the order of the Honorable George H. Moore, dated June 30, 1941, allowing compensation and expenses to Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, being Order No. 290. Said points on appeal are as follows:

1. The Court erred in holding that paragraph (c)(12) of Section 77 of the Bankruptcy Act as amended was not applicable to Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, dated August 23, 1901, with respect to its said claim for compensation and expenses as such Corporate Trustee;

2. The Court erred in granting the Bankers Trust Company an allowance for services rendered and for expenses, including attorneys' fees, prior to the fixing of maximum limits by the Interstate Commerce Commission as required by paragraph (c)(12) of Section 77 of the Bankruptcy Act as amended;

3. The Court erred in not finding that the services of the Bankers Trust Company and its attorneys in connection with the proceedings and plan were within the provisions of Paragraph (c)(12) of Section 77;

[fol. 7] 4. The Court erred in granting an allowance to the Bankers Trust Company, as Corporate Trustee, for services which were in connection with the proceedings and plan in the absence of the fixing of a maximum by the Interstate Commerce Commission;

5. The Court erred in not denying the petition of the Bankers Trust Company for allowance of compensation;

6. The Court erred in making an allowance of compensation on the petition of Bankers Trust Company in view

of the fact that the Court had theretofore transmitted to the Interstate Commerce Commission an identical petition covering the same services for the fixing of maximum limits which had not been acted upon by the Interstate Commerce Commission.

**RECONSTRUCTION FINANCE CORPORATION,**

By **RUSSELL L. SNODGRASS,**  
**ROBERT D. EVANS,**  
**HENNINGS, GREEN, HENRY & EVANS,**  
1130 Boatmen's Bank Building,  
St. Louis, Missouri.

Dated at St. Louis, Missouri, this 9th day of October, 1941.

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[fol. 8] Order Fixing the Time Within Which Objections to the Plan of Reorganization Certified by the Interstate Commerce Commission May Be Filed Herein, and Within Which Petitions for Allowance of Compensation or Expenses May Be Filed, and Fixing a Date for the Hearing on Objections to the Plan and Providing for the Giving of Due Notice to All Parties in Interest.

[Order No. 242.]

(Filed December 30, 1940.)

The Interstate Commerce Commission by Report and Order dated July 6, 1940, having approved a Plan of Reorganization of the Debtor, and by Supplemental Report [fol. 9] and Order dated November 16, 1940, having modified and approved as modified said Plan of Reorganization; and the Interstate Commerce Commission having thereafter certified to this Court the Plan of Reorganization so approved:

Now, Therefore, pursuant to the provisions of Section 77 of the Bankruptcy Act of the United States, it is hereby Ordered:

1. All parties in interest, whether or not they may have intervened herein or become formal parties to the record



of this proceeding, having any objections to said Plan of Reorganization shall file detailed and specific objections in writing to the Plan and their claims, if any, for equitable treatment in the Office of the Clerk of this Court in the United States Court House in the City of Saint Louis, Missouri, on or before February 1, 1941, and shall serve copies thereof on or before said date as hereinafter directed.

2. All petitions for allowance for compensation for services rendered or for expenses (including reasonable attorneys' fees) incurred either under clause (12) of subsection (c) of Section 77 of the Bankruptcy Act or otherwise, shall be filed in triplicate in the office of the Clerk of this Court in the United States Court House in the City of St. Louis, Missouri, on or before February 15, 1941, and shall be served on or before said date as hereinafter directed. Said petitions shall cover such services rendered and expenses incurred up to and including January 31, 1941; provided, however, that the filing of such petitions shall be without prejudice to subsequent petitions for allowance for compensation for services rendered or expenses incurred [fol. 10] after said date. The provisions of paragraph 5 of this Order shall not be applicable to petitions for allowances heretofore filed with this Court and forwarded to the Interstate Commerce Commission.

3. Applications for counsel fees and disbursements of counsel may be made by the petition of counsel or by the petition of the party or parties by whom counsel have been employed or by joint petition.

4. Upon the filing of each such petition for allowances under clause (12) of subsection (c) of Section 77, and each affidavit filed with any such petition or pursuant to paragraph 5 hereof, the Clerk shall forthwith forward one of the triplicates thereof to the Interstate Commerce Commission for the fixing of a maximum limit or limits on the amount or amounts of the allowances to the petitioner or petitioners from the estate of said Debtor.

5. Each such petition for allowances under Section 77 (c) (12) shall identify the petitioner or petitioners; specify the period of time during which services have been ren-

dered; state briefly the general character of the services and the amount of the allowance requested for such services; and give the total of the expenses for which reimbursement is sought, with a brief description or classification of the major items.

Not less than twenty (20) days prior to the date fixed by the Commission for the hearing on any such petition, the petitioner shall file with the Clerk of this Court, in triplicate, an affidavit or affidavits (unless such affidavit or affidavits shall have been filed with the petition), which shall contain, as nearly as may be,

[fol. 11] (a) a full and detailed statement of the services for which compensation is sought, the date or dates or approximate period of time when they were rendered; and the approximate time devoted thereto;

(b) appropriate detail with respect to all expenses, including transportation and subsistence expenses.

Each such petition for allowances, not under Section 77 (c) (12), shall contain, as nearly as may be, the general matter and the detail hereinabove in this paragraph 5 required in respect of petitions and affidavits for allowances under Section 77 (c) (12).

Any affidavit so filed shall be deemed a part of the petition to which it relates. A copy of any such affidavit shall be served as hereinafter directed prior to the filing thereof with the Court.

6. Any and all objections to said Plan of Reorganization and any and all claims for equitable treatment and any and all petitions for allowance of compensation and expenses which may be filed herein pursuant to this Order are set for hearing in Court Room No. Two (2) of this Court at Saint Louis, Missouri, at 10:00 A. M. on March 19, 1941, or as soon thereafter as conveniently possible, at which time any party in interest may appear and be heard in support of or in opposition to such objections and such claims for equitable treatment and such petitions for allowance.

7. The Trustees herein shall forthwith give notice of the entry of this Order (a) by mailing a copy of this Order by

registered mail, postage prepaid, to the Interstate Commerce Commission and to all parties in interest in these [fol. 12] proceedings or their attorneys, a list containing the names and addresses of said parties in interest or their attorneys being hereto annexed and marked Schedule A; and (b) by publishing a Notice substantially in the form of Schedule B hereto annexed in each of the following newspapers not later than January 7, 1941:

In St. Louis, Missouri, in the St. Louis Globe-Democrat, in the St. Louis Post-Dispatch, and in the St. Louis Star-Times;

In New York, New York, in the New York Times, and in the Wall Street Journal;

In Boston, Massachusetts, in the Boston Record;

In Chicago, Illinois, in the Chicago Tribune;

In Birmingham, Alabama, in the Birmingham News;

In Memphis, Tennessee, in the Memphis Commercial Appeal;

In Kansas City, Missouri, in the Kansas City Star;

In Springfield, Missouri, in the Springfield Leader and Press;

In Cape Girardeau, Missouri, in the Southeast Missourian;

In Oklahoma City, Oklahoma, in the Oklahoman;

In Tulsa, Oklahoma, in the Tulsa World and the Tulsa Tribune;

In Wichita, Kansas, in the Wichita Beacon;

In Ft. Smith, Arkansas, in the Fort Smith Southwest American;

In Jonesboro, Arkansas, in the Jonesboro Sun;

In Pensacola, Florida, in the Pensacola Journal;

In Tupelo, Mississippi, in the Tupelo Journal.

Said Trustees shall file in these Proceedings proper proof of the serving of copies of this Order and of the publication of said Notice as herein directed. ✓

8. Copies of objections to the Plan, of petitions for [fol. 13] allowance and of affidavits to such petitions for

allowance shall be served by the parties filing same on the Trustees herein and on all parties in interest as set forth in Schedule A hereto annexed, by mailing copies thereof, postage prepaid, to said parties or their counsel.

GEO. H. MOORE,

United States District Judge.

Dated, December 30th, 1940.

[fol. 14]

Schedule A.

Parties in Interest and Counsel.

Larkin, Rathbone & Perry,

70 Broadway, New York, N. Y.

● Counsel for Central Hanover Bank and Trust Company and Daniel K. Catlin, Trustees under the Prior Lien Mortgage of St. Louis-San Francisco Railway Company.

Fordyce, White, Mayne, Williams & Hartman,

506 Olive Street, St. Louis, Missouri.

Counsel for Central Hanover Bank and Trust Company and Daniel K. Catlin, Trustees under the Prior Lien Mortgage of St. Louis-San Francisco Railway Company.

Milbank, Tweed & Hope,

15 Broad Street, New York, N. Y.

Counsel for The Chase National Bank of the City of New York and John A. Aid, Trustees under the Consolidated Mortgage of St. Louis-San Francisco Railway Company.

Nagel, Kirby, Orrick & Shepley,

319 North Fourth Street, St. Louis, Missouri.

Counsel for The Chase National Bank of the City of New York and John A. Aid, Trustees under the Consolidated Mortgage of St. Louis-San Francisco Railway Company.

White & Case,

14 Wall Street, New York, N. Y.

Counsel for Bankers Trust Company and Walter W. Smith, Trustees under the Refunding Mortgage of The Kansas City, Fort Scott and Memphis Railway Company.

[fol. 15] Bryan, Williams; Cave & McPheeters,  
Boatmen's Bank Building, St. Louis, Missouri.

Counsel for Bankers Trust Company and Walter W. Smith, Trustees under the Refunding Mortgage of The Kansas City, Fort Scott and Memphis Railway Company.

Bingham, Dana & Gould,  
One Federal Street, Boston, Massachusetts.

Counsel for Old Colony Trust Company, Trustee under the General Mortgage of Kansas City, Memphis and Birmingham Railroad Company.

Eliot, Blayney & Bedal,  
506 Olive Street, St. Louis, Missouri.

Counsel for Old Colony Trust Company, Trustee under the General Mortgage of Kansas City, Memphis and Birmingham Railroad Company.

Hunton, Williams, Anderson, Gay & Moore,  
1003 Electric Building, Richmond, Virginia.

Counsel for John W. Stedman et al., Prior Lien Mortgage Bondholders' Committee.

Taylor, Chasnoff & Willson,  
1930 Boatmen's Bank Building, St. Louis, Missouri.

Counsel for John W. Stedman et al., Prior Lien Mortgage Bondholders' Committee.

Cravath, deGersdorff, Swaine & Wood,  
15 Broad Street, New York, N. Y.

Counsel for Frederick H. Ecker et al., Consolidated Mortgage Bondholders' Committee.

Carter & Small,  
418 Olive Street, St. Louis, Missouri.

Counsel for Frederick H. Ecker et al., Consolidated Mortgage Bondholders' Committee.

[fol. 16] Davis Polk Wardwell Gardiner & Reed,  
15 Broad Street, New York, N. Y.

Counsel for James H. Brewster, Jr., et al., The Kansas City, Fort Scott and Memphis Railway Company Refunding Mortgage Bondholders' Committee.



Charles P. Williams,  
220 North Fourth Street, St. Louis, Missouri.

Counsel for James H. Brewster, Jr., et al., The Kansas City, Fort Scott and Memphis Railway Company Refunding Mortgage Bondholders' Committee.

C. M. Clay,

Counsel for Reconstruction Finance Corporation, Washington, D. C.

Hennings, Green, Henry & Hennings,  
Boatmen's Bank Building, St. Louis, Missouri.

Counsel for Reconstruction Finance Corporation.

William J. Kane,

Secretary and Counsel of The Railroad Credit Corporation,  
Maryland Trust Building, Baltimore, Maryland.

Miller, Boston & Owen,

15 Broad Street, New York, N. Y.

Counsel for Committee of Preferred Stockholders of St. Louis-San Francisco Railway Company.

Chadbourne, Wallace, Parke & Whiteside,

25 Broadway, New York, N. Y.

Counsel for Committee of Common Stockholders of St. Louis-San Francisco Railway Company.

[fol. 17] William V. Hodges,

20 Pine Street, New York, N. Y.

Counsel for St. Louis-San Francisco Railway Company, Debtor.

Jesse McDonald,

506 Olive Street, St. Louis, Missouri.

Counsel for St. Louis-San Francisco Railway Company, Debtor.

Secretary of the Treasury,

Washington, D. C.

(Designated by executive order No. 7263, Jan. 4, 1936, to act in respect of interest or claims of United States.)

**Frank A. Thompson,**  
705 Olive Street, St. Louis, Missouri.

Special Counsel for John G. Lonsdale, Co-Trustee,  
St. Louis-San Francisco Railway Company.

**E. G. Nahler,**  
906 Olive Street, St. Louis, Missouri.

General Solicitor for J. M. Kurn and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company.

[fol. 18]

**Schedule B.**

In the  
District Court of the United States  
For the Eastern District of Missouri,  
Eastern Division.

In the Matter of

St. Louis-San Francisco Railway  
Company, a Missouri Corporation,  
Debtor.

In Proceedings  
for the  
Reorganization  
of a Railroad.  
No. 7004.

To All Parties in Interest in the Aforesaid  
Proceedings:

Pursuant to an Order entered December ..., 1940, in the  
above entitled Proceedings, Notice is hereby given that:

1. The Interstate Commerce Commission has certified to  
the Court, pursuant to the provisions of Section 77 of the  
Bankruptcy Act, a Plan of Reorganization of St. Louis-  
San Francisco Railway Company, Debtor, copies of which  
are on file with said Commission and the Court.

2. All parties in interest, whether or not they may have  
intervened in said Proceedings, or become formal parties  
to the record thereof, having any objections to such Plan  
[fol. 19] of Reorganization, shall file detailed and specified  
objections to the Plan and their claims, if any, for equita-  
ble treatment, in writing in the office of the Clerk of the  
above named Court, at the United States Court House in  
the City of St. Louis, Missouri, on or before February 1,

1941, and shall serve copies thereof on or before said date, on all parties to, and interveners in said Proceedings.

3. All petitions for allowance for compensation for services rendered or for expenses incurred, in the form and as otherwise required in said order, shall be filed in triplicate with the Clerk of said Court on or before February 15, 1941, and petitioners shall serve copies thereof, on or before said date, on all parties to, and interveners in said Proceedings.

4. 10:00 a. m., on March 19, 1941, has been fixed as the time and Court Room No. Two (2) of the Court in the United States Court House in the City of St. Louis, Missouri, as the place, for hearing all parties in interest in support of, or in opposition to, any and all objections to said Plan of Reorganization and any and all claims for equitable treatment and any and all petitions for allowance that may be filed herein pursuant to said Order.

By Order of the Court:

J. M. KURN,  
JOHN G. LONSDALE,  
Trustees.

Dated December 30, 1940.

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[fol. 20] Petition of Bankers Trust Company as Corporate Trustee under the Refunding Mortgage of The Kansas City, Fort Scott & Memphis Railway Company for Compensation and Expenses.

(Filed February 15, 1941.)

[Petition for Allowance No. 266.]

To the Honorable Judges of the District Court of the United States, for the Eastern District of Missouri:

The Petition of Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage, dated August 23rd, 1901, of The Kansas City, Fort Scott & Memphis Railway Company, respectfully shows:

1. That Petitioner (hereinafter sometimes called the

"Corporate Trustee") is and has been since March 24, 1903, a corporation duly organized and existing under the Banking Laws of the State of New York, duly empowered to act as trustee under corporate mortgages, and is Successor Corporate Trustee under the Refunding Mortgage (hereinafter sometimes called the "Mortgage") made by The Kansas City, Fort Scott & Memphis Railway Company to The Mercantile Trust Company and William H. [fol. 21] Thompson, as Trustees, a copy of which Mortgage and the Supplements thereto were filed with this Court on December 29, 1933, and the Corporate Trustee begs leave to refer to the same and to the provisions thereof with the same force and effect as if the same were fully set forth herein.

2. That the Mortgage was duly executed, acknowledged and delivered in all respects in conformity with law, and upon the execution and delivery thereof, was properly and duly recorded in each jurisdiction in which the properties described in the granting clauses of the Mortgage were located.

3. That the Mortgage secures Forty-seven Million, Five Hundred Thirteen Thousand Dollars (\$47,513,000) aggregate principal amount of Refunding Mortgage Gold Bonds, due October 1, 1936 (hereinafter sometimes called the "Bonds"), of which approximately Twenty-five Million Eight Hundred Thirty-five Thousand Dollars (\$25,835,000) principal amount is outstanding in the hands of the public, and Twenty-one Million Six Hundred Seventy-eight Thousand Dollars (\$21,678,000) principal amount is held under pledge under the Consolidated Mortgage dated March 1, 1928 of the St. Louis-San Francisco Railway Company (hereinafter sometimes called the "Debtor") to The Chase National Bank of The City of New York, Successor Corporate Trustee to Interstate Trust Company, and John A. Aid, as Trustees.

4. That the Mortgage is a first lien upon the main line of railroad between Kansas City and Memphis and upon the equipment, franchises and other properties, real, personal and mixed, at any time appurtenant to the railways and property subject to the lien of the Mortgage, and is a second lien upon the main line between Memphis and

Birmingham, subject only to the prior lien thereon of a certain Mortgage dated March 1, 1894, executed by Kansas City, Memphis & Birmingham Railroad Company to Old Colony Trust Company, as Trustee, under which, [fol. 22] upon information and belief, there are presently issued and outstanding the aggregate principal amount of Six Million Nine Hundred Twenty-five Thousand One Hundred Seventy Dollars (\$6,925,170) of bonds of said Kansas City, Memphis & Birmingham Railroad Company, of which Three Hundred Ninety-nine Thousand Five Hundred Dollars (\$399,500) principal amount are pledged with the Corporate Trustee under the Mortgage.

That the following securities are now pledged with the Corporate Trustee subject to the terms of the Mortgage:

\$399,500 Kansas City, Memphis & Birmingham R.R. Co.,  
5% Income Bonds (stamped), due March 1,  
1934.

\$2,463,000 Kansas City, Memphis & Birmingham R.R. Co.,  
5% Income Bonds (assented-cancelled), due  
March 1, 1934.

\$257,000 Kansas City, Memphis & Birmingham R.R. Co.,  
5% Income Bonds (unassented-cancelled),  
due March 1, 1934.

7,150 Bonnaville & Southwestern R.R. Co., Common  
Stock.

17,754 Kansas City, Clinton & Springfield Ry. Co.,  
Capital Stock.

59,748 Kansas City, Memphis & Birmingham R.R. Co.,  
Common Stock.

29,995 Kansas City and Memphis Ry. & Bridge Co.,  
Common Stock.

2,280 Tyrone Central R.R. Co., Common Stock.

That the Corporate Trustee now holds cash deposited with it subject to the terms of the Mortgage in the amount of Two Hundred Sixty-five Thousand Three Hundred Fifteen and 01/100 Dollars (\$265,315.01), of which One Hundred Five Thousand Five Hundred Three and 36/100 [fol. 23] Dollars (\$105,503.36) represents accumulated proceeds of properties released from the lien of the Mortgage,



and One Hundred Fifty-nine Thousand Eight Hundred Eleven and 65/100 Dollars (\$159,811.65) represents accumulated income received upon the collateral held subject to the terms of the Mortgage.

5. That Article Twenty-third of the Mortgage provides as follows:

"The Trustees shall be entitled to reasonable compensation for all services rendered by them in the execution of the trusts hereby created, which compensation as well as all reasonable expenses necessarily incurred and actually disbursed hereunder, the Railway Company agrees to pay and hereby charges on the trust estate."

That the Mortgage also provides that in the event of default in the payment of interest continuing for three (3) months or default in the payment of principal (which defaults in payment of interest and principal have occurred and still exist), the Trustees have the right to sell all and singular the mortgaged premises under the power of sale contained in the Mortgage or by virtue of judicial proceedings and that in the event of any such sale, and as provided by Article Seventeenth of the Mortgage, the proceeds of sale, together with any other sums which may then be held by the Trustees or be payable to them under the Mortgage shall be applied as follows:

"1. to the payment of the costs, expenses, fees and other charges of such sale, and a reasonable compensation to the Trustees, their agents and attorneys, and to the payment of all expenses and liabilities incurred and advances or disbursements made by the Trustees, and to the payment of all taxes, assessments or liens prior to the lien of this indenture, except any taxes, assessments or other superior liens subject to which such sale shall have been made."

6. That the above entitled proceeding was initiated by the filing with this Court on or about May 16, 1933 of a [fol. 24] petition by the Debtor, St. Louis-San Francisco Railway Company; that said petition was approved by this Court on or about May 17, 1933; and that these proceedings thereupon superseded the then existing Receivership

Proceedings under which James M. Kurn and John J. Lonsdale were Receivers.

7. That the period of time covered by this Petition during which services have been rendered by the Corporate Trustee extends not only from on or about November 1, 1932, when Receivers were appointed in the Receivership Proceedings but also during the period prior to that date when the officers of the Debtor and representatives of various security holders were developing the Plan of Reorganization dated July 6, 1932 and were endeavoring to place such Plan in effect, to and including January 31, 1941, a period of approximately nine years.

8. That during the period referred to in the preceding paragraph, the responsibility of the Corporate Trustee to protect the mortgaged security entrusted to it and the rights of the holders of the Bonds secured thereby has required constant diligence on its part in following the proceedings herein, the proceedings had before the Interstate Commerce Commission in connection with this Reorganization and otherwise; that in the exercise of its duties the Corporate Trustee has been guided by the fact that a Bondholders' Protective Committee for holders of the Bonds was organized on or about December 26, 1933 and was authorized to represent, during the greater part of these proceedings, the holders of about sixty percent (60%) of the Bonds outstanding in the hands of the public, which Committee, on leave granted, intervened generally herein and has been active throughout these proceedings; that the Corporate Trustee has at all times cooperated with said Bondholders' Protective Committee in an endeavor to eliminate all unnecessary duplication of effort; that the [fol. 25] existence of such Committee, however, has not relieved the Corporate Trustee of its responsibility to protect the mortgaged security entrusted to it and the rights of the holders of the Bonds secured thereby.

9. That in order to be properly informed as to matters arising from time to time in these proceedings, and to more adequately and efficiently perform its duties as Corporate Trustee, officers of the Corporate Trustee studied the relationships existing with respect to the properties subjected to the lien of the Mortgage and the other prop-

erties of the Debtor and also the various reports from time to time prepared by the Debtor's Trustees covering the allocation of revenues and expenses for the years 1934, 1936 and 1937; to the lines of railway upon which the Mortgage is a lien; that in this connection it was possible for the Corporate Trustee to take advantage of the detailed studies of the operating and financial situation of the Debtor which were then available in the Analysis Department of Bankers Trust Company.

10. That in the conduct of its duties as Corporate Trustee, the services and work performed and steps taken have at all times been under the supervision of R. G. Page, a Vice President, and A. W. Bachman, an Assistant Vice President, of Bankers Trust Company; that R. G. Page has been employed in the Trust Department of Bankers Trust Company for more than thirty-five years and has been an officer of Bankers Trust Company for twenty-five years; that A. W. Bachman has been employed by Bankers Trust Company for more than seventeen years, during six years of which he was its senior Railroad Analyst; subsequently for the last four years he has been employed in its Trust Department, devoting a large part of his time to railroad mortgages under which Bankers Trust Company acts as Corporate Trustee and he has been an Assistant Vice President of the Trust Company for more than five years.

[fol. 26] 11. That in the performance of its duties as Corporate Trustee and as part of the services constituting the the subject matter of this Petition, the Corporate Trustee had to give special attention to the following matters, among others:

(a) In January, 1934, the Debtor's Trustees proposed to issue Trustee's Certificates in connection with an application for a loan to the Federal Emergency administration of Public Works. This required considerable attention on the part of the Corporate Trustee and its counsel, particularly in view of the fact that it was proposed to create a prior charge on the properties subject to the mortgage.

(b) Consideration of the annual budgets of the

Debtor's Trustees proposing expenditures for additions and betterments for the respective ensuing years. These annual budgets were reviewed and discussed with counsel and with representatives of the Bondholders' Protective Committee. The budget for the year 1938 required special attention because of the necessity of considering objections thereto made by The Prudential Insurance Company of America, the holder of a substantial amount of the Bonds.

(c) Consideration of the equipment from time to time subject to the Mortgage. On December 9, 1936, the Court authorized the Debtor's Trustees to retire and destroy certain obsolete equipment and directed that the net proceeds of sale of salvage of such equipment subject to the Mortgage should be deposited with the Corporate Trustee. Since the Corporate Trustee had no record of the nature and amount of the equipment subject to the Mortgage, it was incumbent upon it, in order adequately to protect the Mortgaged Estate, to ascertain the facts in this respect. These efforts of the Corporate Trustee culminated with the [fol. 27] furnishing to it on February 20, 1937 by the Debtor's Trustees of schedules of equipment showing their various classifications. These schedules were accepted by the Corporate Trustee with a reservation of all rights that it might have with regard to any replacement covenants contained in the Mortgage. Other items of obsolete equipment considered in this connection included the sales of equipment made pursuant to Orders in these proceedings Nos. 132, 155, 156, 185 and 201.

(d) Consideration of the abandonment of the Kansas City, Clinton and Springfield Branch. On February 3, 1937 a deposit of Thirty-seven Thousand One Hundred Ninety-four and 10/100 Dollars (\$37,194.10) was made with the Corporate Trustee with advice that this amount represented net proceeds of the sale of salvage from various abandoned branch lines subject to the Mortgage, made pursuant to Orders in these proceedings Nos. 16, 31 and 32. Since no indication was given the Corporate Trustee with respect to the breakdown of this amount, and since there was

no indication whether this amount represented all the net proceeds of the abandonment of the Kansas City, Clinton and Springfield Branch, it was necessary to carry on extensive correspondence with the chief accounting officer of the Debtor to obtain the requisite information. Largely as a result of these efforts, the Corporate Trustee was furnished on March 27, 1939 with a certificate with respect to the recovery of additional salvage in connection with the abandonment of said Branch, appraised at Sixty-three Thousand Nine Hundred Thirty-three and 37/100 Dollars (\$63,933.37). This certificate also showed the application of Three Thousand Three Hundred Three and 79/100 Dollars (\$3,303.79) of this appraised value to properties subject to the lien of the Mortgage, and, as a substitution for the balance of said appraised [fol. 28] value of Sixty Thousand Six Hundred Twenty-nine and 58/100 Dollars (\$60,629.58), the installation of the improvements on properties subject to the lien of the Mortgage at a cost of Seventy-two Thousand Four Hundred Eighty-three and 39/100 Dollars (\$72,483.39).

(e) Similar consideration of the sale of salvage as the result of the abandonment of the Current River and the Hunter Branches pursuant to the Order in these proceedings No. 172-A.

(f) Consideration of Petition No. 175 filed by the Corporate Trustee of the Prior Lien Mortgage of the Debtor to have 186 shares of the Arkansas Mine & Coal Company deposited with it as collateral under such Prior Lien Mortgage together with any dividends paid thereon and on Directors' qualifying shares.

(g) Consideration of the proposal of Debtor's Trustees to sell part of the property of the Gulf, Texas & Western Railway Company to the Chicago, Rock Island & Pacific Railway Company at its scrap value and the application of that value to the purchase of certain properties from the Chicago, Rock Island & Pacific Railway Company lying between Frisco Junction and Ardmore, Oklahoma.

(h) Consideration of proceedings instituted to re-



move cloud on title to lands in Crawford County, Kansas, as to which the Corporate Trustee was advised of the intention of Guy W. Von Schrlitz to interplead it as a party defendant. Apparently various properties subject to the lien of the Mortgage and involved in these proceedings had been sold but no proceeds of such sale had been deposited with the Corporate Trustee and no releases from the Mortgage lien were obtained in connection therewith. After thorough consideration of this matter with its counsel and with the Debtor's Trustees, the Corporate Trustee signified its willingness to execute a release in accordance with an appropriate Order of this Court [fol. 29] (being Order No. 205 entered July 13, 1939) upon the certification to it that property equivalent in value to the property released had been subjected to the lien of the Mortgage. This action was taken by the Corporate Trustee to avoid possible additional and expensive litigation which, in its judgment, could not result in benefit to holders of the Bonds commensurate with the expense and delay incident to such litigation.

(i) Examination and consideration throughout these proceedings of the records herein which to January 31, 1941, have totalled approximately 4,800 printed pages, which examination and consideration was necessary on the part of the Corporate Trustee since it was permitted to intervene in these proceedings only specially.

(j) The following is a brief enumeration of other matters directly affecting properties upon which the Mortgage was a lien and which required the attention of the Corporate Trustee:

(1) Sale of property in Jackson County, Missouri, pursuant to Order in these proceedings No. 167-A.

(2) Retirement and removal of roundhouse facilities at South Springfield, Missouri, pursuant to Order in these proceedings No. 180.

(3) Sale of property in Crittenden County, Ar-

kansas, pursuant to Order in these proceedings No. 195-A.

(4) Condemnation proceedings instituted with respect to lands in Crittenden County, Arkansas.

12. That upon the institution of the Receivership Proceedings above mentioned and the subsequent institution [fol. 30] of these proceedings further and additional duties devolved upon the Corporate Trustee, for the adequate protection of the Mortgage security and the rights of the holders of the Bonds. While the Receivers in the Receivership Proceedings aforesaid were not appointed until on or about November 1, 1932, considerable activity on the part of the Corporate Trustee was required in the months immediately preceding such appointment due to the efforts by officers of the St. Louis-San Francisco Railway Company and representatives of the various security-holders of that Company to develop a Plan of Reorganization. This culminated in the Plan dated July 6, 1932. As the result of further efforts by such officers and representatives modifications were made to such Plan and, as so modified, the Plan was filed with this Court on May 16, 1933 (the date the Debtor applied for reorganization under Section 77 of the Bankruptcy Act). Since this was one of the earliest proceedings under said Section 77, there was immediately presented to the Corporate Trustee the problem of its relationship to and duties in respect of proceedings of this character. All facts at that time available to the Corporate Trustee bearing on the finances and operations of the Debtor, in so far as they related to properties subject to the lien of the Mortgage, were carefully considered by its officers and with its counsel and with members of its staff experienced in railroad matters.

On April 1, 1933 the Debtor defaulted in payment of interest on the Bonds and the Corporate Trustee duly presented coupons maturing on that date at the office of the Debtor for payment, and made appropriate record when such coupons were not paid.

At the inception of these proceedings, questions were presented as to the necessity and desirability of intervention as a party to these proceedings by the Corporate

**Trustee:** The law in this respect was examined by counsel and was found to be somewhat confused by reason of conflicting decisions in other railroad reorganization matters. [fol. 31] Conferences were held, records were investigated and a petition was prepared and presented to this Court by counsel for the Corporate Trustee. On leave granted by this Court, such petition was filed December 29, 1933, to which petition and to all of the provisions thereof the Corporate Trustee begs leave to refer with the same force and effect as if the same were fully set forth herein. Thereafter and on March 29, 1934 leave was granted the Corporate Trustee by this Court to intervene specially in these proceedings. In petitioning for leave to intervene the Corporate Trustee also petitioned for the segregation and sequestration of the tolls, income, rents, revenues and profits of the property subject to the lien of the Mortgage for the benefit of the Trustees under the Mortgage and the holders of the Bonds and interest obligations secured thereby.

In accordance with the direction of this Court and on August 9, 1933, the Corporate Trustee filed a statement of the claim of the holders of the outstanding Bonds with April 1, 1933 and subsequent coupons, and at the same time took appropriate action to assure itself that the Trustee for the outstanding bonds issued under the above-mentioned mortgage of the Kansas City, Memphis and Birmingham Railway Company (of which Three Hundred Ninety-nine Thousand Five Hundred Dollars (\$399,500) principal amount are pledged as collateral with the Corporate Trustee), also took appropriate steps to file a similar claim on behalf of such bonds.

13. That on May 16, 1933, as above mentioned, the Debtor filed a Plan of Reorganization, dated July 6, 1932, as amended, with this Court and with the Interstate Commerce Commission, pursuant to Section 77 of the Bankruptcy Act. This Plan, which involved the properties conveyed to the Trustees under the Mortgage as security for the outstanding Bonds, required a study in detail by the Corporate Trustee. This plan was abandoned by the previous Reorganization Managers on December 20, 1933, [fol. 32] but was not withdrawn from the Interstate Com-

merce Commission where it remained under consideration until the approval of any plan was refused by Division 4 of the Interstate Commerce Commission in its report, dated March 17, 1937. On November 16, 1936 the Corporate Trustee filed a petition for leave to intervene in the proceedings before the Interstate Commerce Commission. This action was felt necessary in view of the fact that important and substantial changes in the outstanding obligations of the Debtor, including the Bonds, were proposed under the Plan theretofore filed. Leave to intervene was granted the Corporate Trustee by the Interstate Commerce Commission on November 28, 1936. The Corporate Trustee attended such proceedings before the Interstate Commerce Commission only for the purpose of keeping in touch with developments, considered by it and its counsel to be necessary adequately to perform its duties. In furtherance of the aforesaid purposes the Corporate Trustee studied the various plans and briefs in the proceedings before the Interstate Commerce Commission and consulted with the Bondholders' Protective Committee as to necessity for any action on its part. On November 19, 1937 the Debtor filed its Amended Plan of Reorganization and subsequently, on October 21, 1938, a plan was filed by three bondholders' committees, one of which was the Bondholders' Protective Committee representing the interests of holders of the Bonds. Each of these plans were reviewed by the Corporate Trustee. Hearings were held before the Interstate Commerce Commission on these proposed plans, and the Corporate Trustee, consistent with its aforementioned purposes, attended such hearings.

Prior to the hearings before the Interstate Commerce Commission in November, 1938, at the request of W. B. Stratton, one of the holders of the Bonds, officers of Corporate Trustee considered a further Plan of Reorganization prepared by Mr. Stratton and consulted with him in regard thereto.

[fol. 33] 14. That throughout the period here under consideration, the Corporate Trustee cooperated with the Bondholders' Protective Committee towards securing payment of past due interest on the Bonds by the Debtor. Certain payments were authorized by this Court. In con-

nection with the authorization of the first payment, the Corporate Trustee, at the request of the Bondholders' Protective Committee, had its counsel prepare a memorandum in support of the pending petition of such Committee for such interest payment.

From time to time this Court authorized payment of interest on the Three Hundred Ninety-nine Thousand Five Hundred Dollars (\$399,500) principal amount of bonds of the Kansas City, Memphis and Birmingham Railroad Company which the Corporate Trustee held in pledge as collateral under the Mortgage. Since these bonds were past due it was necessary that all such pledged bonds be stamped to evidence this payment. The proceeds of such interest payments were deposited with the Corporate Trustee in the Collateral Account under the Mortgage. The Corporate Trustee also studied the possible effect of the Statute of Limitations on matured bonds.

During the entire period of these proceedings the Corporate Trustee has from time to time consulted with holders of the Bonds, both by telephone and in person, regarding the status of these proceedings as they affected the Bonds, and also carried on extensive correspondence in reply to written inquiries received from holders of the Bonds.

15. That on information and belief, all of said services were rendered by the Corporate Trustee in the execution of the trusts created by the Mortgage and in the exercise of the powers and duties conferred upon the Corporate Trustee thereunder; that all of the services of the Corporate Trustee set forth or referred to herein were necessary to protect the Mortgaged Estate and the interests of the holders of the Bonds secured by the Mortgage; that all of said services have been rendered by the Corporate Trustee exclusively in its status as Corporate Trustee and with a view solely to preserve the Mortgaged Estate and to protect the rights of the holders of the Bonds; that any attendance by the Corporate Trustee at the proceedings before the Interstate Commerce Commission as aforesaid has been incidental to the accomplishment of its aforesaid purposes; and that said services, and the expenses incurred by the Corporate Trustee in



connection therewith as hereinafter-referred to, have not been rendered or incurred "in connection with the proceedings and plan" and have not been rendered or incurred for the benefit of the Debtor's general estate within the meaning of Section 77 (c) (12) of the Bankruptcy Act.

16. That Section 77 (c) (12) of the Bankruptcy Act provides in part as follows:

"(12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, *to be paid out of the debtor's estate*, for the actual and reasonable expenses (including reasonable attorney's fees) incurred *in connection with the proceedings and plan* by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance *to be paid out of the debtor's estate* for the actual and reasonable expenses incurred *in connection with the proceedings and plan* and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. \* \* \*" (Italics ours.)

17. That on information and belief said Section 77 (c) (12) of the Bankruptcy Act and the jurisdiction of the Interstate Commerce Commission thereunder do not apply to the Corporate Trustee in respect of the services and expenses constituting the subject matter of this Petition since said services and expenses have not been rendered [fol. 35] or incurred "in connection with the proceedings and plan" and have not been rendered or incurred for the benefit of the Debtor's general estate within the meaning of said Section 77 (c) (12).

18. That furthermore, the Corporate Trustee is advised by its New York counsel, and therefore alleges, that by virtue of the Mortgage and under the law it now has a prior lien or charge upon the Mortgaged Estate including the above mentioned deposited cash in the sum of Two Hundred Sixty-five Thousand Three Hundred Fifteen and 01/100 Dollars (\$265,315.01), for its reasonable compensa-

tion and expenses (which term "expenses", as used in this Petition, includes counsel fees).

19. That, on information and belief, there is nothing contained in said Section 77 which frees the property subject to the Mortgage from the lien and priority created by the provisions of the Mortgage, for the compensation and expenses of the Corporate Trustee, including reasonable legal fees and other expenses incurred and actually disbursed by it for the protection of the Mortgaged Estate or which fees the mortgaged property of the obligation to exonerate the Corporate Trustee from such expenses incurred and actually disbursed by it; that the Corporate Trustee claims that this Court has the duty and the power to decide the extent and validity and priority of the prior lien or charge afforded it by the provisions of the Mortgage, to determine the amount thereof and to charge the same, including counsel fees and other expenses, against the property subject to the Mortgage including the deposited cash held by the Corporate Trustee subject to the terms of the Mortgage; and that Section 77 does not provide that the Corporate Trustee must relinquish its lien or charge and priority and receive only such allowances as the Interstate Commerce Commission may limit, subject to the provisions of Paragraph (c) (12) of Section 77.

[fol. 36] 20. That, on information and belief, the Bankruptcy Act does not contain any provision empowering the Interstate Commerce Commission to adjudicate the amount of or fix the limits of or classify any claim of the Corporate Trustee with respect to reasonable compensation for its services or for the services of its attorneys and counsel in these proceedings or otherwise or to hear, determine, alter or limit the prior lien or charge given to the Corporate Trustee therefor by the contract provisions of the Mortgage, or the extent of such prior lien or charge.

21. That, on information and belief, the purpose and intent of Congress (as revealed in the words of Section 77 of the Bankruptcy Act to the effect that "within such maximum limits as are fixed by the Commission, the judge may make an allowance to be paid out of the Debtor's estate for the actual and reasonable expenses [including reasonable attorney's fees] incurred in connection with

the proceedings and plan" and by other words of said Section (c) (12) and by other portions of said Section 77, and as revealed in the practice thereunder) were and are to have referred to the Interstate Commerce Commission the consideration and determination of the question as to the amount of compensation to be awarded to all parties entitled to compensation or reimbursement out of the estate of the principal Debtor (meaning thereby unmortgaged assets and the equity of the principal Debtor in its mortgaged and pledged assets), and to have the maximum limits of such compensation and reimbursement fixed by the Interstate Commerce Commission on the basis of the anticipated cash position of the reorganized company, and the probable prospective earnings of the property in the light of its earnings experience and all other relevant facts, to the end that there shall be adequate coverage of such fixed charges by the probable earnings and to the end that the plan of reorganization shall be compatible with the public interest as these factors bear upon the ultimate question as to the fairness and practicability of a proposed plan of reorganization.

[fol. 37] 22. That, on information and belief, said Section 77 does not require or permit the Interstate Commerce Commission to take the further and additional step of determining or limiting the amount or extent of the reasonable value of the services of the Corporate Trustee and its expenses for counsel or other expenses lawfully incurred and disbursed by the Corporate Trustee and chargeable by the provisions of the Mortgage as a prior lien or charge upon the Mortgaged Estate.

23. That, on information and belief, if said Section 77 and paragraph (c) (12) thereof should be construed to authorize the Interstate Commerce Commission to place a limit upon the reasonableness of the expenses for compensation or otherwise incurred by the Corporate Trustee (secured by such prior lien or charge) and should be construed to authorize a determination of that issue based upon consideration of the exigencies of the Plan of Reorganization and the need of the principal Debtor for adequate cash working capital, or without reference to the contract provisions of Articles Seventeenth and Twenty-

third of the Mortgage, then said Section 77 is invalid, void and unconstitutional in whole or in part within the meaning of Article Five of the Amendments to the Constitution of the United States, in that the Corporate Trustee would be deprived of property without due process of law, and within the meaning of other provisions of said Article Five and within the meaning and intent of Section 1 of Article III of the Constitution of the United States vesting the judicial power of the United States in the Courts.

24. That this Petition does not include certain administration services for which the Corporate Trustee has been paid by the Debtor's Trustees.

25. That the reasonable value of the services of the Corporate Trustee is the sum of Ten thousand Dollars (\$10,000).

[fol. 38]. 26. That in connection with the performance of its duties under the Mortgage, the Corporate Trustee has employed as legal counsel Messrs. White & Case of New York City and Messrs. Bryan, Williams, Cave & McPheeters of St. Louis, Missouri, to advise it with respect to the performance of its said duties and services, and in that connection, from time to time, as deemed necessary in connection with such duties, to attend hearings in these proceedings and before the Interstate Commerce Commission. For such legal services said firm of White & Case and said firm of Bryan, Williams, Cave & McPheeters have rendered to the Corporate Trustee their bills in the amount of Ten thousand Dollars (\$10,000), and Six thousand Dollars (\$6,000) together with disbursements of Twenty-four and 28/100 Dollars (\$24.28), to which bills are attached affidavits on behalf of such counsel explaining in reasonable detail the services rendered, copies of which bills with their accompanying affidavits are annexed hereto as Schedules A and B, respectively, and by this reference made a part hereof.

27. That, based upon its experience of many years, the Corporate Trustee is of the opinion that the services rendered by said firm of White & Case, as set forth in the aforesaid affidavit attached to their bill, are reasonably worth not less than the sum of Ten thousand Dollars



(\$10,000), and that the services rendered by said firm of Bryan, Williams, Cave & McPheeters, as set forth in the aforesaid affidavit attached to their bill, are reasonably worth not less than the sum of Six thousand Dollars (\$6,000); and that the Corporate Trustee, pursuant to its powers and in accordance with the provisions of Article Twenty-third of the Mortgage, has paid each of said bills, both fees and disbursements, and such payments constitute reasonable expenses of the Corporate Trustee necessarily incurred and actually disbursed under the Mortgage, such payments, however, having been made subject to their being finally determined to be "reasonable expenses [fol. 39] necessarily incurred and actually disbursed" under the Mortgage.

28. The Corporate Trustee has necessarily incurred herein other reasonable expenses, actually disbursed, as set forth in Schedule C hereto annexed and made a part hereof in the total sum of Seven hundred sixty-seven and 88/100 Dollars (\$767.88) (including reimbursement to counsel for additional necessary, actual and reasonable disbursements in the sum of One hundred seventy-nine and 99/100 Dollars (\$179.99)).

29. That, by Order No. 242, dated December 30, 1940, this Court ordered that all petitions for compensation for services or for expenses (including reasonable attorney's fees) incurred otherwise than under clause (12) of subsection (c) of Section 77 of the Bankruptcy Act, as amended, should be filed in triplicate with the Clerk of this Court on or before February 15, 1941 and served on or before said date as in said Order directed, and that each such petition, not under Section 77 (c) (12), should contain, as nearly as may be, the general matter and the detail required by said Order in respect of petitions under Section 77 (c) (12); that this Petition is filed to meet the aforesaid provisions of said Order No. 242 with respect to services and expenses incurred otherwise than under the aforesaid Section 77 (c) (12).

30. That this Petition shall not be deemed to constitute a waiver (a) of the Corporate Trustee's claim, as set forth in paragraph 17 hereof, that said Section 77 (c) (12) of



the Bankruptcy Act is not applicable to it or (b) of the Corporate Trustee's claim, as set forth in paragraph 19 hereof, that it is entitled to have the extent, validity and priority of its lien or charge for compensation and expenses determined by this Court.

31. That no agreement or understanding exists between the Corporate Trustee and any other person for a [fol. 40] division of compensation; that it has not entered into any agreement, written or oral, express or implied, with any other party in interest or any attorney for any other party in interest for the purpose of fixing the amount of the fees or other compensation to be paid in these proceedings.

32. That the Corporate Trustee reserves its right hereafter to apply for compensation for services rendered and reasonable expenses necessarily incurred and actually disbursed by it after January 31, 1941.

Wherefore, the Corporate Trustee prays that this Court:

1. Adjudicate and decree that said paragraph (c) (12) of Section 77 is not applicable to the Corporate Trustee, or if applicable to the Corporate Trustee that said paragraph is unconstitutional and void;

2. Adjudicate that there is due to the Corporate Trustee the sums set forth in paragraphs 25, 26 and 28 hereof as its compensation and expenses (including the compensation and expenses paid by it to its counsel as aforesaid) and liquidate its claim in the aggregate amount of Twenty-six thousand seven hundred ninety-two and 16/100 Dollars (\$26,792.16);

3. Decree that the Corporate Trustee has a lien and charge in the aggregate amount of Twenty-six thousand seven hundred ninety-two and 16/100 Dollars (\$26,792.16); upon the property covered by the lien of the Mortgage, including the deposited cash, prior and senior to any other lien or charge thereon except operating expenses and Court costs, and decree the payment to the Corporate Trustee of the aforesaid aggregate amount, to the extent not satisfied

from any other source, out of any property and funds available therefor which are covered by the lien of [fol. 41] the Mortgage, or in the alternative permit the Corporate Trustee to foreclose its lien securing its said claim or otherwise to enforce its lien and priority; and

grant to the Corporate Trustee such other and further relief, which it may hereafter apply for, as may be just and proper.

Dated, February 11, 1941.

**BANKERS TRUST COMPANY,**

By **E. E. BEACH,**  
Vice President.

**WHITE & CASE,**  
**BRYAN, WILLIAMS, CAVE & McPHEETERS,**  
Counsel for Bankers Trust Company, as  
Corporate Trustee under the Refunding  
Mortgage.

[fol. 42] United States of America,  
Southern District of New York, } ss.:  
County of New York,

E. E. Beach, being duly sworn, deposes and says: that he resides at Summit, New Jersey; that he is a Vice President of Bankers Trust Company; that he has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters and things therein stated to be alleged upon information and belief, and that as to those matters and things he believes it to be true.

That the reason why this verification is made by deponent and not by Bankers Trust Company is that Bankers Trust Company is a corporation and deponent is an officer thereof, to-wit, a Vice President.

That the sources of deponent's knowledge and the grounds for his belief as to the matters stated in said

Petition to be alleged upon information and belief are the records of Bankers Trust Company and advices received from its counsel.

E. E. BEACH.

Sworn to before me this 11th day of February, 1941.

C. WALTER BRYDON,

Notary Public, Kings County, N. Y.

Kings Co. No. 940, Register's No. 1534

New York Co. No. 1455, Register's No. 1-B-867

My Commission Expires March 30, 1941

(Notarial Seal)

[fol. 44]

Schedule A.

New York, February 7, 1941.

Bankers Trust Company, Trustee,

Refunding Mortgage dated August 23, 1901,

The Kansas City, Fort Scott & Memphis

Railway Company, St. Louis-San Francisco

Railway Company,

16 Wall Street,

New York, N. Y.

To White & Case, Dr.

14 Wall Street

To Professional Services rendered Bankers Trust Company as Corporate Trustee under the Refunding Mortgage dated August 23, 1901 of The Kansas City, Fort Scott & Memphis Railway Company, from November 10, 1932 to and including January 31, 1941, the details of which services are set forth in the affidavit of Fitzhugh McGrew, verified February 11, 1941, attached hereto and made a part hereof:.... /.....

\$10,000.00

[fol. 46] Affidavit of Fitzhugh McGrew.

In the  
District Court of the United States  
For the Eastern District of Missouri,  
Eastern Division

In the Matter of St. Louis-San Francisco Railway Company, a Missouri corporation, Debtor.	}	In Proceedings for the Reorganization of a Railroad. No. 7004.
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United States of America Southern District of New York State, County and City of New York	}	ss.:
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FITZHUGH MCGREW, being duly sworn, deposes and says:

I am a member of the firm of White & Case, which has acted as counsel for Bankers Trust Company as the Corporate Trustee under the Refunding Mortgage dated August 23, 1901 of The Kansas City, Fort Scott and Memphis Railway Company (hereinafter sometimes called the "Mortgage"), and I make this affidavit in support of the bill of White & Case dated February 7, 1941, rendered to Bankers Trust Company in the amount of \$10,000 covering the services of White & Case as such counsel.

White & Case maintains an office record in which the members and associates of said firm make contemporaneous [fol. 47] daily entries showing in detail the nature of the services rendered by them on the various matters on which they are engaged, and the time devoted thereto. The following is a detailed and specific account prepared from such records of the services rendered by various members and associates of White & Case by months from November 10, 1932 to and including January 31, 1941.

. 1932—November

Consideration of Plan of Readjustment as modified August 29, 1932 and whether any action on the part of the Corporate Trustee is necessary in view of the recent receivership of St. Louis-San Francisco Railway Com-

pany. Consideration and office conference in regard to whether shares of Kansas City, Clinton and Springfield Railway Co. pledged under the Mortgage should be transferred to the name of the Corporate Trustee. Examination of documents in the receivership proceedings.

#### December (1932)

Retention of Messrs. Bryan, Williams, Cave & McPheeters as local counsel in St. Louis (hereinafter referred to as "local counsel"). Further consideration as to whether the stock pledged under the Mortgage should be transferred to the name of the Corporate Trustee. Consideration of the application of the Receivers of the St. Louis-San Francisco Railway to the R.F.C. for a loan of \$3,000,000 with which to pay taxes and equipment trust maturity and consideration of the application to the Court for authority to issue prior lien Receivers' Certificates. Conference with Mr. Adkins and Mr. Rodgers of Crayth, deGersdorff, Swaine & Wood (counsel for the Reorganization Managers) and Mr. Banks (representing Central Hanover Bank, Prior Lien Mortgage Trustee) in regard to those applications. Examination and consideration of draft of proposed orders in regard to the foregoing, for primary and for ancillary jurisdictions and examination of other documents. Consideration of proposed special appearance of the Corporate Trustee; examination of draft petition for leave to appear specially and of draft order granting that leave, and communications with local counsel in regard to the same. Consideration of the desirability of seeking subrogation to the lien of taxes and equipment trust obligations to be paid with the proceeds of the R.F.C. loan, based on pledge of the Receivers' Certificates and telephone conference and correspondence with local counsel discussing the same. Advising the Corporate Trustee of all of the foregoing.

#### January (1933)

Telephone conferences with Mr. Rodgers in regard to petition of Receivers for authority to make expenditures for additions and betterments during first six months of 1933 on the property of the St. Louis-San Francisco.



Railway Company etc. and examining notice of filing and of hearing petition in regard to the same. Advising the Corporate Trustee and letter to local counsel in regard to the same. Considering whether it is necessary to advise bondholders to file proof of claim, examining printed receivership record, advising Corporate Trustee that order appointing Receivers exempts the bondholders from filing such proof of claim and telephoning Mr. Rodgers to that effect. Correspondence with local counsel regarding probable amount of refund claims, funds available for payment, taxes, equipment trust payments and other matters constituting diversions.

[fol. 49] February (1933)

Consideration of memorandum of Corporate Trustee and of portion of printed receivership record upon which our advice is solicited by the Corporate Trustee. Advising the Corporate Trustee. Consideration of letter from local counsel in regard to amount of preferred claims reported by the Receivers to be outstanding. Consideration of formal demand by the Receivers upon the Corporate Trustee for cancellation of March 1, 1933 coupons on pledged bonds of Kansas City, Memphis & Birmingham Railroad Co. (hereinafter called "Birmingham Bonds"). Letter to Corporate Trustee advising it as to that demand. Consideration of printed receivership record.

March (1933)

Consideration of whether the Corporate Trustee should present for payment and attempt to collect coupons appurtenant to the Assented Income 5% Bonds of Kansas City, Memphis & Birmingham Railroad; examination of Mortgage in connection with question and advising the Corporate Trustee as to the same. Consideration of printed receivership record including portion authorizing payment of interest on the Birmingham Bonds and portion covering foreclosure suit by Central Hanover Bank and Trust Co. Considering and preparing reply to inquiry of Irving Trust Co. regarding whether the Corporate Trustee would file proof of claim.

## April (1933)

Telephone conference with the Corporate Trustee regarding whether pledged stock of Kansas City, Clinton and Springfield Railway Co. should be transferred into name of Corporate Trustee. Consideration of draft form of proposed certificate for execution by officer of St. Louis- [fol. 50] San Francisco Railway Company regarding that transfer. Letter to the Corporate Trustee advising it in the premises. Consideration of memorandum from Corporate Trustee and portion of printed receivership record relating to suit of Central Hanover Bank & Trust Company (Prior Lien Mortgage Trustee) to foreclose its prior lien mortgage. Opinion to Corporate Trustee. Consideration of receivership record.

## May (1933)

Examination and consideration of petition in bankruptcy of St. Louis-San Francisco Railway Company (hereinafter referred to as the "Debtor") and order thereon. Letter of advice to the Corporate Trustee.

## June (1933)

Consideration of printed record in the bankruptcy proceedings (hereinafter referred to as the "printed record"). Letters of advice to the Corporate Trustee regarding the same. Consideration of Order No. 4 in the bankruptcy proceedings directing filing of Statement of Claim. Working on preparation of Statement of Claim. Telephone conferences with the Corporate Trustee regarding the same.

## July (1933)

Telephone conferences with the Corporate Trustee in regard to the recordation of the Mortgage in various states and counties; numerous office conferences respecting same; studying documents in connection therewith; advice to Corporate Trustee thereon. Consideration of whether Corporate Trustee or bondholders should file Statement of Claim. Drafting Statement of Claim for Corporate Trustee. Consideration of whether Corporate [fol. 51] Trustee should intervene. Telephone conferences

with Corporate Trustee in regard to its disposition of interest paid on pledged collateral and related questions. Conference with Corporate Trustee in regard to status of all collateral held under the Mortgage and advice thereon. Consideration of further portion of printed receivership record and advice to Corporate Trustee that it required no action. Telephone conference with Corporate Trustee re personnel of reorganization committee and amount of bonds on deposit.

#### August (1933)

Legal research in regard to whether filing of Statement of Claim in bankruptcy proceeding makes the creditor a party and if so, to what extent and in regard to whether intervention is necessary for that purpose. Consideration of whether the Corporate Trustee should seek to intervene. Considering order of Interstate Commerce Commission granting leave to intervene to Northwestern Mutual Life Insurance Company and correspondence with Corporate Trustee re the same. Preparing Statement of Claim by the Corporate Trustee; conference with the latter in regard to the same, and arranging for execution of said Claim by the latter and for transmitting it to the Court. Consideration of the printed record. Examination of provisions of the Mortgage in connection with the necessity of recording; examining correspondence with the Receivers of the St. Louis-San Francisco Railway under the previously existing receivership and writing opinion letter to Corporate Trustee in regard to that matter.

#### September (1933)

Office conferences regarding the pending situation. Telephone conference with Mr. Swaine of Crutath, de [fol. 52] Gersdorff, Swaine & Wood, in regard to the status of the pending plan of reorganization, the appointment of Trustees in bankruptcy; a conference to work out a new plan and other related matters. Telephone conferences with Mr. Rodgers of that firm and with the Corporate Trustee. Preparing form of reply to inquiring bondholders as to what the Corporate Trustee proposes to do to protect the bondholders.

October (1933)

Preparation of reply by Corporate Trustee to bondholder with respect to default in interest. Consideration of the printed record. Correspondence with local counsel and with Corporate Trustee. Correspondence with local counsel in regard to receiving applications in advance of hearings. Consideration of petition of Trustees of the Debtor in regard to conversion of old dining cars and the equipment of freight cars. Further examination of printed record and letter to Corporate Trustee that no action on its part as Trustee was necessary in regard to those portions of the record. Obtaining documents and data from the Corporate Trustee necessary for the preparation of petition of the Corporate Trustee for intervention and for the segregation and sequestration of income earned by the Mortgage. Working on the preparation of that petition for intervention and sequestration. Legal research into various questions arising in the preparation of the same; numerous office conferences and correspondence with local counsel in connection therewith.

November (1933)

Examination of petition of Trustees of the Railway for the abandonment of various branch lines including part of the Clinton branch. Telephone conference with [fol. 53] Mr. Sunderland of Davis, Polk, Wardwell, Gardiner & Reed, counsel for the Bondholders Protective Committee (hereinafter called the "Committee") for the bonds secured by the Mortgage (hereinafter called the "Bonds") and with Mr. Gammell of Milbank, Tweed & Hope, counsel for the Chase National Bank, Trustee of the Consolidated Mortgage, in regard to that abandonment. Office conference respecting the same. Legal research in regard to the effect of the after acquired property clause of the Mortgage in connection with the purchase of railroad property. Continuing preparation of petition for intervention and for segregation order; numerous office conferences in regard to the same; further legal research as to questions arising out of the same including the question whether the rules and practice of the Interstate Commerce Commission should be complied with; conference with Mr. Gammell and telephone conferences

with Mr. Sunderland re same. Further conference with Mr. Gammell and conference with Mr. Rodgers and Mr. Groom of Cravath, de Gersdorff, Swaine & Wood. Consideration of additional portions of the printed record.

#### December (1933)

Consideration of transcript of proceedings at Washington and conference concerning reorganization plans of the Debtor. Extended office conferences and legal research in regard to whether, in proceedings under Section 77, interest on any obligation should be paid in preference to interest on any other obligations and in regard to right of Trustees under Section 77 to pay interest. Office conference respecting whether borrowing is justified to pay fixed charges on obligations secured by prior lien and whether trustees under equipment trusts have any greater rights than trustees under mortgages. Further work on the petition of the Corporate Trustee for inter-[fol. 54] vention; office conferences and conferences with Mr. Gammell and Mr. Gaillard of Milbank, Tweed & Hope and with Mr. Fitzgibbon of Davis, Polk, Wardwell, Gardiner & Reed all in regard to the same. Putting the petition for intervention and order in final form and working on memorandum in support of it. Preparing petition for leave to intervene and order. Conferences with the Corporate Trustee; arranging for execution of the petition by the Corporate Trustee and by Mr. Smith, individual co-trustee of the Mortgage, in St. Louis and correspondence with local counsel covering execution of, and instructions for filing the petition for leave to intervene. Further office conferences in regard to all of the foregoing.

#### 1934—January

Arranging for execution of the petition for intervention by the Corporate Trustee and sending same to local counsel for execution by Mr. Smith, the individual co-trustee, and for filing. Further work on preparation of brief on the petition for intervention. Consideration of the Order of the Court of January 9, 1934 directing segregation of income. Office conference re same. Examination of petition of trustees of the Debtor for leave to issue \$1,442,545.90 of Trustees' certificates for purchase of new



rails; office conferences in regard to same and seeking to obtain the attitude of the Chase National Bank as pledgee of Bonds and of the Committee toward the same. Conferences with Mr. Fitzgibbon and with Mr. Gammell in regard to the position to be taken by the Committee and by the Chase National Bank respectively on the foregoing matter of Trustees' certificates. Conference with the Corporate Trustee in regard to the position to be taken by the Corporate Trustee on the same. Further office conference re same and re telegram to local counsel setting forth position of the Corporate Trustee. Detailed letter [fol. 55] to local counsel outlining the position of the Corporate Trustee in respect to approaching hearing on Trustees' Certificates and our general views on the situation. Further conference with Mr. Fitzgibbon. Further telephone conferences in regard to the same matter. Further correspondence with local counsel as to the hearing on the issuance of Trustees' Certificates. Letter to Mr. Sunderland and conference with Mr. Gaillard who are to communicate with their St. Louis counsel on the matter. Office conferences in regard to the brief in support of the petition for intervention and sending same to local counsel for the hearing thereon. Telephone conference with Corporate Trustee as to the results of the hearing on the issuance of the Trustees' Certificates. Office conference re same. Office conference in regard to the proposed action by the Trustees of the Debtor to buy and hold matured Equipment Trust Certificates.

#### February (1934)

Correspondence in regard to hearing on petition for intervention. Consideration of printed record. Office conference in regard to proposed application for loan of \$5,000,000 from R.F.C. to pay off underlying bonds of Kansas City, Memphis and Birmingham Railroad. Conference with Mr. Lane of Milbank, Tweed & Hope, in regard to the same and in regard to petition of Central Hanover Bank & Trust Company for segregation of earnings on oil leases, etc. Correspondence with local counsel on both of those matters and on petition for intervention. Telegram to local counsel re hearing on segregation of revenues from oil leases, etc. Examination of documents

and rendering legal opinion with respect to lost coupons and issuance of duplicate bonds and coupons therefor. Correspondence re additional petitions and orders.

[fol. 56] March (1934)

Conference with Mr. Fitzgibbon as to status of Corporate Trustee's petition for intervention. Correspondence with and instructions to local counsel in regard to hearing for segregation of revenues from oil leases. Office conferences in regard to status of Corporate Trustee's petition for intervention. Correspondence with local counsel and conference with Mr. Fitzgibbon in regard to same. Consideration of and office conferences respecting the form of order to be entered on petition for intervention. Letter to local counsel on form of order to be entered allowing special intervention. Conference regarding order relating to sequestration of earnings.

April (1934)

Further correspondence with local counsel as to form of order on intervention and as to sequestration order. Conference with Corporate Trustee concerning allowance of special intervention. Conference with Mr. Lane and Mr. Lewis as to brief on segregation of income from oil properties. Letter to local counsel in regard to such segregation from oil leases. Office conference in regard to status of petition for intervention of the Corporate Trustee and in regard to the effect of the segregation order of January 6, 1934 on the earnings and expenses of the property covered by the Mortgage. Examination of answers filed by Debtor's Trustees and by Central Hanover Bank and Trust Company, as Prior Lien Mortgage Trustee, to our petition. Examination of proposed petition for payment of interest on the Birmingham Bonds and office conference in regard to that matter. Conference with Mr. Lane in regard to the same. Correspondence with local counsel as to oil leases and earnings thereon and conference with Mr. Lane as to same. Examination of files and records to date. Correspondence with local counsel regarding pending motions.

[fol. 57] May (1934)

Correspondence in regard to order granting special intervention to the Corporate Trustee and office conference on same. Office conference as to form of order on prayer for segregation of earnings. Further office conference as to segregation. Consideration of Mr. Sunderland's memorandum regarding payment of interest on underlying mortgages. Office conference on letter to Mr. Sunderland in regard to same. Correspondence with local counsel respecting hearing on same. Conference with Mr. Fitzgibbon as to Corporate Trustee's petition for intervention. Correspondence with local counsel as to contents of the printed record.

June (1934)

Correspondence in regard to the contents of the printed record and as to obtaining advance notice of pending motions, etc. Examination of additional portions of the printed record. Further correspondence.

July (1934)

Office conference in regard to requirements by Corporate Trustee for release of certain property subject to the Mortgage which had been sold by the Debtor. Correspondence with Corporate Trustee and consideration of order of Interstate Commerce Commission for determination of question whether the Debtor is insolvent.

August (1934)

Examination of file on matter of segregation of earnings and in regard to whether claims were filed by the bondholders.

September (1934)

Correspondence as to printed record. Examination of notice of hearing as to insolvency of the Debtor.

[fol. 58] October (1934)

Correspondence in regard to abandonment of branch of the Debtor. Office conference respecting hearings on

insolvency of the Debtor. Miscellaneous other correspondence.

#### November (1934)

Consideration of additional portions of the printed record.

#### 1935—January.

Consideration of additional portions of the printed record. Correspondence.

#### March (1935)

Preparation of answer to inquiring bondholder upon legal aspects of situation. Consideration of petition and order for examination by Debtor's Trustees of former directors and bankers for the Debtor. Correspondence and consideration of the printed record.

#### April (1935)

Consideration of petition for abandonment of certain trackage at Granby. Consideration of the printed record.

#### May (1935)

Office conference in regard to proposed suit by Debtor's Trustees against Speyer & Company and Seligman and others. Telephone conference with Mr. Lane in regard to the same. Office conference, and conference with Mr. Fitzgibbon. Examination of additional records in regard to intervention by the Consolidated Mortgage Trustee; consideration of intervention petition and order permitting that Trustee to intervene. Conference with Mr. Fitzgibbon in regard to matter of proof of lien, etc. and advisability of having that issue brought on at once or postponed. Further consideration of proceedings proposed to be instituted by the Debtor's Trustees against Seligman and others.

#### June (1935)

Conference with Mr. Fitzgibbon and with Mr. Gammell in regard to the petition for intervention of the Consolidated Mortgage Trustee and conference with Mr. Lewis

in regard to answer of Central Hanover Bank, Prior Lien Trustee, to that petition. Preparation of answer of the Corporate Trustee to that petition for intervention and correspondence in regard to the same. Consideration of additional portions of the printed record.

#### September (1935)

Consideration of report and order of Interstate Commerce Commission relating to the application of the Central Hanover Bank for services in the foreclosure proceedings which preceded the proceedings in Section 77 and letter to the Corporate Trustee thereon. Consideration of additional portion of the printed record.

#### October (1935)

Examination of proposed petition for payment of baggage claims, etc.

#### November (1935)

Conferences with Mr. Fitzgibbon respecting proposed interest payments on the Birmingham Bonds. Advice to Corporate Trustee accordingly. Wire to one of Debtor's Trustees and telephone conferences with the Corporate Trustee in regard to the same. Examination of papers [fol. 60] on motion for betterments and improvements; conference with Mr. Fitzgibbon in regard to the position to be taken by the Committee and the Corporate Trustee. Miscellaneous correspondence. Consideration of the printed record.

#### December (1935)

Correspondence in regard to judgment lien asserted to be prior to lien of the Mortgage. Examination of records and preparation of memorandum in regard to segregation of earnings. Conferences with Mr. Fitzgibbon in regard to petition and order for hearings with respect to accrued interest on the Birmingham Bonds and with respect to the matter of segregation of earnings and the formula therefor in connection with the Fort Scott line. Conference with Mr. Stiefel of Milbank, Tweed & Hope. Correspondence in regard to hearings on proposed



payment of interest on the Birmingham Bonds. Consideration of additional portions of the printed record.

#### 1936—January

Correspondence in regard to the proposed pledging of the Gulf Railway stock under the Prior Lien Mortgage; examination of provisions of the Mortgage and conference with the Corporate Trustee. Correspondence in regard to interest payments on the Birmingham Bonds.

#### February (1936)

Conference with Mr. Fitzgibbon and letter to local counsel in regard to proposed payment of accrued interest on the Birmingham Bonds. Examination of petition thereon. Conference with the Corporate Trustee as to those Bonds pledged under the Mortgage. Consideration of additional portions of the printed record.

#### [fol. 61] March (1936)

Examination of the Mortgage. Conference with the Corporate Trustee in regard to the status of cancelled Birmingham Bonds held by the Corporate Trustee. Miscellaneous correspondence. Consideration of the printed record of recent proceedings. Further conference with the Corporate Trustee, examination of the Mortgage and consideration of facts on the same. Opinion letter to the Corporate Trustee in regard to proposed surrender of coupons on these cancelled Bonds. Examination of petitions for abandonments. Correspondence.

#### April (1936)

Correspondence with local counsel and with the Committee in regard to proposed abandonment of the Bessie Branch of the railroad. Examination of the Mortgage. Consideration of additional portion of the printed record.

#### May (1936)

Consideration of printed record in regard to payment of interest on the Birmingham bonds and letter to the Corporate Trustee thereon. Correspondence in regard to the petition on those bonds. Drafting reply to bond-

holders' inquiry as to proof of claim. Further correspondence.

#### June (1936)

Consideration of additional printed record including the order for payment of interest on the Birmingham Bonds pledged under the Mortgage. Correspondence in regard to extension of time to file Plan of Reorganization. Office conference. Conference with Mr. Fitzgibbon in regard to earnings and non-payment of interest and the proposed acquisition of additional equipment and funds therefor.

#### [fol. 62] July (1936)

Telephone conference with Mr. Fitzgibbon in regard to recent communications between the Committee and their St. Louis counsel on the proposed payment of equipment trust maturities out of earnings and computation of earnings available as distinguished from earnings accruing on the properties subject to the Mortgage. Correspondence and conference with Mr. Fooshee of Davis, Polk, Wardwell, Gardiner & Reed in regard to further hearings on plan of readjustment of 1932.

#### October (1936)

Correspondence in regard to petition to pay interest on the Birmingham Bonds including those pledged with the Corporate Trustee. Office conference. Examination of correspondence thereon. Letter to Mr. Fitzgibbon. Consideration of additional printed record. Correspondence in regard to petition to lease locomotives.

#### November (1936)

Preparation of form of Petition for Intervention by the Corporate Trustee at the hearings before the Interstate Commerce Commission on the Plan of Reorganization. Letter to Davis, Polk, Wardwell, Gardiner & Reed. Office conference and conference with Mr. Stiefel. Further office conference on the hearing on December 1, on that Petition and on the plan of reorganization expected to be submitted. Conference with Mr. Groom. Further office conferences on the intervention petition and conference with

the Corporate Trustee. Office conference and correspondence in regard to that petition. Letters to Corporate Trustee and to Mr. Sanderland regarding petition for additions and betterments in 1937.

[fol. 63] December (1936)

Opinion letter to the Corporate Trustee approving papers for payment of missing coupon. Attending hearing before the Interstate Commerce Commission on the plan of reorganization. Office conference and conference with Mr. Gammell in regard to petition for additions and betterments. Examination of petition of Committee in regard to payment of interest on the bonds secured by the Mortgage; office conference; conference with Mr. Fitzgibbon and conference and correspondence with the Corporate Trustee respecting same. Further correspondence re same. Telephone conferences with Mr. Swaine and conference with Mr. Fitzgibbon as to motion before Interstate Commerce Commission. Conferences with Mr. Fitzgibbon and with the Corporate Trustee and office conference in regard to petition for payment of interest on the Bonds and regarding the proposal dismantlement of equipment by the Debtor's Trustee and the status of the Mortgage as to the same.

1937—January

Correspondence, examination of the Mortgage and of the reorganization proceedings and conference with the Corporate Trustee in connection with an inquiry of bondholder as to the status of cancelled and uncanceled Birmingham Bonds held under the Mortgage. Conference with Mr. Fitzgibbon and with the Corporate Trustee as to the same; drafted reply to inquiring bondholder and further correspondence as to same. Correspondence and conference with Mr. Fitzgibbon in regard to salvage in the disposition of obsolete equipment. Conference with Mr. Stiefel and conference with Mr. Fitzgibbon respecting proposed extension of spur track. Conferences with the Corporate Trustee and with Mr. Fitzgibbon respecting question of insolvency of the Railway pending before Interstate Commerce Commission. Correspondence respect-  
[fol. 64] ing hearing on Committee's petition for payment

of interest on the Bonds and in regard to the share of salvage of obsolete equipment, belonging to the holders of the Bonds. Telephone conferences with the Corporate Trustee and with Mr. Fitzgibbon.

#### February (1937)

Correspondence re hearing on interest payment on the Bonds. Telephone conference with Mr. Stiefel re Master's report on petition for intervention by Committee for Birmingham Bonds.

#### March (1937)

Approving reply to inquiring bondholder. Correspondence regarding equipment under the Mortgage. Conference with Mr. Fitzgibbon in regard to Committee's application for interest. Examination of papers re Interstate Commerce Commission order on original plan of reorganization of the Debtor. Correspondence in regard to equipment constituting part of security under the Mortgage.

#### April (1937)

Examined printed record. Considering papers re issuance of duplicate bonds. Examination of the Mortgage in connection with sale of locomotive subject to the Mortgage. Correspondence in connection with proper release of same and securing the proceeds for the benefit of the Mortgage. Correspondence regarding extension of time for Debtor to file a plan of reorganization.

#### June (1937)

Further correspondence in regard to sale of locomotive and release thereof from the Mortgage. Telephone conference with Mr. Fitzgibbon and with the Corporate [fol. 65] Trustee in regard to payment of interest on the Bonds. Correspondence re inquiry of a holder of the Bonds. Considered plan of reorganization proposed by Mr. Stratton. Telephone conference with Mr. Fitzgibbon in regard to situation. Correspondence.

## July (1937)

Telephone conference with the Corporate Trustee re present status. Consideration of additional portions of printed record. Telephone conference with the Corporate Trustee re court orders for segregation purposes. Conference with Mr. Fitzgibbon in regard to opposition to petition of Debtor's Trustees to use cash on hand to purchase equipment obligations.

## August (1937)

Telephone conference with the Corporate Trustee and advice to local counsel of position of the Corporate Trustee as to the use of cash to purchase equipment obligations. Telephone conference with Mr. Fitzgibbon re same.

## September (1937)

Consideration of the printed record. Conference with the Corporate Trustee and correspondence regarding destruction of certain obsolete locomotives.

## October (1937)

Continuing consideration of printed record. Conference with Mr. Stiefel with respect to pending motion for the purchase of steel cars.

## November (1937)

Correspondence in regard to proposed petition for sale of land under the Mortgage; conferences with Mr. Stiefel; [fol. 66] letter to and conferences with the Corporate Trustee re same. Correspondence and consideration of pending motions and hearings. Examined proposed Plan of Reorganization for the Debtor. Conferences with the Corporate Trustee in reference to proposed expenditures of the Debtor for 1938 and certain points in the Plan of Reorganization.

## December (1937)

Correspondence. Further conferences with the Corporate Trustee and with Mr. Fitzgibbon in connection with proposed expenditures of the Debtor for betterments for



1938. Examining memorandum prepared by Committee on question of payment of interest on the Bonds. Conferences with the Corporate Trustee and with Mr. Fitzgibbon in regard to that brief and concurring memorandum to be filed by the Corporate Trustee; further conference with Mr. Fitzgibbon and conference with Mr. Stiefel regarding same; office conference and consideration of the brief of the Committee, and preparation of memorandum on same on behalf of the Corporate Trustee. Office conferences and conferences with the Corporate Trustee on the same matter. Correspondence re same. Further conference with the Corporate Trustee. Conference with the Corporate Trustee and with Mr. Fitzgibbon regarding figures and data as to earnings of the Debtor. Correspondence and office conference on the foregoing memorandum re payment of interest. Further conference with Mr. Fitzgibbon.

#### 1938—January

Conference with the Corporate Trustee and office conference as to formula on earnings and approaching hearings before the Interstate Commerce Commission.

#### [fol. 67] February (1938)

Conferences with Mr. Maston of Davis, Polk, Wardwell, Gardiner & Reed and with the Corporate Trustee and office conference with respect to the approaching I.C.C. hearings. Examination of circular letter of Committee. Attendance of hearing on Debtor's Plan of Reorganization before the Interstate Commerce Commission in Washington with representatives of the Corporate Trustee and conferred with counsel for Committees. Office conference re same.

#### March (1938)

Conference with the Corporate Trustee on letter to the holders of the Bonds. Examination of papers on motion to adjourn I.C.C. hearings and office conference re same.

#### April (1938)

Conferences with Mr. Fitzgibbon, Mr. Heiss of Larkin, Rathbone & Perry and with the Corporate Trustee and

office conference in regard to pending petition of Central Hanover Bank as Prior Lien Trustee for collateral and dividends thereon under after-acquired property clause. Correspondence. Further conferences with Mr. Fitzgibbon and with the Corporate Trustee and further office conference re same. Letter to counsel for Committee. Conferences with Mr. Wickersham and with Mr. Fitzgibbon and examination of record of reorganization proceedings of the Debtor in 1917, in connection with the foregoing petition of the Central Hanover Bank. Further conference with Mr. Wickersham; conference with Mr. Adkins, and correspondence in regard to the same. Office conference in regard to whether after-acquired property clause in a pledge of stock was effective after institution [fol. 68] of proceedings under Sec. 77. Further conference with Mr. Wickersham and office conference re same. Legal research as to whether lien of after-acquired property clause attaches to securities acquired by the mortgagor but not pledged prior to institution of Sec. 77 proceedings. Numerous office conferences as to the law and procedure to be adopted. Further extended legal research as to whether after-acquired property clause will be enforced against a trustee in bankruptcy when possession of the property has never been taken. Examination of the Mortgage and of the 1916 Plan of Reorganization in that connection. Telephone conference with local counsel.

May (1938)

Conference with the Corporate Trustee in regard to the petition of Central Hanover Bank for the after-acquired collateral. Correspondence.

June (1938)

Correspondence in regard to suits in Crawford County, Kansas, to quiet title. Conference with the Corporate Trustee, examination of its files and drafting letters to officers of the Debtor respecting the accounting for proceeds of released and salvaged and abandoned properties.

July (1938)

Conferences with the Corporate Trustee and correspondence with respect to motion for construction of a round house and demolition and salvage of old house.

## August (1938)

Further correspondence re salvage of round house. Correspondence and consideration of motion and order to file claim in connection with Birmingham Bonds. Con-[fol. 69] sideration of order prescribing last day to file proof of claim by Old Colony Trust Co. as Trustee under General Mortgage of Kansas City, Memphis & Birmingham R.R. Letter to the Corporate Trustee embodying recommended form of letter to Old Colony Trust Company. Consideration of additional portions of the printed record.

## September (1938)

Consideration of additional printed record and additional pleadings. Conference with the Corporate Trustee and correspondence with respect to the proposed sale of or destruction of obsolete equipment.

## October (1938)

Further conferences with the Corporate Trustee and correspondence in connection with question of accounting for salvage and consideration of proposed letter by the Corporate Trustee to the Debtor in connection therewith. Further conference and suggesting revisions in that letter. Conferences with the Corporate Trustee in regard to the proposed Plan of the three Committees and the question of lien on equipment. Examined Plan of Reorganization proposed by the three Bondholders Committee. Conference with the Corporate Trustee considering that Plan. Further study of that Plan. Office conference and conference with the Corporate Trustee re approaching I.C.C. hearing. Consideration of additional printed record.

## November (1938)

Attendance at hearing at Washington on Plans of Reorganization proposed by the Debtor and by the Committees and conferred with Mr. Fitzgibbon and others at the hearing. Conference with the Corporate Trustee respecting authorized payment of installment of interest. Office conference in regard to petition of Central Hanover Bank for assignment of after-acquired property as col-[fol. 70] lateral. Telephone conference with Mr. Fitzgib-

bon. Conference with Mr. Stiefel respecting proposed sale and release of certain properties under the Mortgage and deposit of proceeds with the Corporate Trustee. Consideration of petition for sale; conference with the Corporate Trustee and with Mr. Stiefel.

#### December (1928)

Consideration of correspondence between the Debtor and the Corporate Trustee and opinion letter respecting application of salvage proceeds. Consideration of proposed budget for 1939 and conference with the Corporate Trustee. Correspondence regarding sale of certain of the mortgaged property. Correspondence re appropriations for additions and betterments and conference with the Corporate Trustee.

#### 1939—January

Correspondence respecting petition for interest on Birmingham Bonds. Consideration of additional printed record. Examination of brief of the Committees in support of the Plan. Examination of briefs of numerous parties.

#### February (1939)

Reply to letter to the Corporate Trustee in regard to proceedings to remove cloud on land in Kansas; preparing letter to Debtor's Trustee, and conference with the Corporate Trustee. Conference with the Corporate Trustee respecting the question of application of salvage from the abandonment of the Springfield Branch.

#### March (1939)

Correspondence in regard to suit to remove cloud on title to Kansas land and conference with the Corporate [fol. 71] Trustee. Consideration of printed record of recent proceedings. Conference with the Corporate Trustee as to released properties and correspondence.

#### May (1939).

Considering question of releasing from the Mortgage properties which have been heretofore sold; examination of provisions of the Mortgage; letter to the Corporate

Trustee, and office conference. Further correspondence and conference with the Corporate Trustee re same. Conference with the Corporate Trustee and correspondence regarding salvage and sale of obsolete equipment. Office conference in regard to the status under the proposed Plan of Reorganization of funds set aside for payment of matured coupons prior to receivership. Correspondence re matured collateral.

#### June (1939)

Correspondence with respect to the proposed payment of interest on the pledged Birmingham Bonds. Conference with the Corporate Trustee and office conference in regard to statute of limitations on the matured Birmingham Bonds pledged under the Mortgage and correspondence on same. Consideration of additional printed record.

#### July (1939)

Correspondence respecting proposed guaranty of new Terminal Railroad Refunding Bonds to retire outstanding First Mortgage Bonds; examination of papers and telegram to Debtor's Trustee re same. Examination of papers with respect to pledged Birmingham Bonds and with respect to execution of releases covering property sold prior to 1914. Conference with Mr. Fitzgibbon in regard to said proposed release of property sold prior to [fol. 72] 1914 and approval of documents for execution of said releases. Correspondence in regard to those releases. Correspondence in regard to proposed sale of portion of Gulf, Texas & Western Ry which is not under the Mortgage and conference with the Corporate Trustee as to same. Consideration of additional printed record. Correspondence re proceeds of sale and salvage of obsolete equipment.

#### August (1939)

Consideration of miscellaneous motions and reports of the I.C.C. on pending Plan of Reorganization. Correspondence re payment of interest.



## September (1939)

Further consideration of motions, I.C.C. reports as to Plan of Reorganization and status of pending land suit. Conference with Mr. Fitzgibbon as to his motion in connection with payment of October 1, 1933 interest; conference with the Corporate Trustee; and correspondence as to same and order covering the same.

## October (1939)

Consideration of additional printed record and circular letter of the Committee with respect to payment of October 1, 1933 interest. Correspondence and telegram with respect to postponement of hearings on proposed report of Examiner on Plan of Reorganization and conference with the Corporate Trustee as to that report. Examination of various exceptions and briefs to the Examiner's proposed report.

## November (1939)

Further examination of briefs and exceptions to the Examiner's proposed report on Plan of Reorganization.

## [fol. 73] December (1939)

Consideration of additional printed record.

## 1940—January

Consideration of petition for 1940 expenditures for betterments and conference with the Corporate Trustee thereon. Correspondence as to proceeds of salvaged equipment. Consideration of additional printed record.

## February (1940)

Consideration of additional printed record. Correspondence in regard to proposed petition and order on classification of creditors and conference with the Corporate Trustee. Office conference in respect to the pleadings and orders on the claim of the U. S. Fidelity & Guaranty Co. as surety for preferential personal injury claims.

## March (1940)

Consideration of additional printed record and motions.

## May (1940)

Consideration of additional printed record and motions.

## June (1940)

Consideration of motions with respect to proposed payment of current interest on the Birmingham Bonds; correspondence and telephone conference with the Corporate Trustee re same. Further correspondence respecting same.

## July (1940)

Consideration of additional printed record. Examination of report on proposed Plan of Reorganization by the [fol. 74] I.C.C. Office conference and correspondence respecting same.

## August (1940)

Examination of the report of the I.C.C. on the Plan of Reorganization, the Commission's order and the Committee's circular letter. Telephone conference with Mr. Fitzgibbon and with the Corporate Trustee in regard to whether to file objections to the treatment of the holders of the Bonds, under the Plan. Consideration of additional printed record.

## September (1940)

Consideration of motions with respect to the pending Plan of Reorganization. Examining briefs on the Plan.

## October (1940)

Correspondence and examined briefs in connection with the proposed modification as to the constitution of the Reorganization Committee. Conference with and advice to the Corporate Trustee as to whether the court order protecting the rights of undeposited bonds of foreclosed issues will survive reorganization. Telephone conference with the Corporate Trustee as to the petition of the three Committees for payment of interest on the Bonds and as to the proposed circular letter of the Committee. Correspondence in connection with that petition.

November (1940)

Examination of Plan of Reorganization as reported by I. C. C.

December (1940)

Consideration of motions in regard to sale of obsolete locomotive and other motions.

[fol. 75] 1941—January

Examination of order in connection with petitions for licenses. Consideration of additional pages of the printed record.

The records of White & Case show that a total of 421 hours was devoted to this matter from November 10, 1932 to January 31, 1941 by various partners and associates of that firm. Approximately two-thirds of such services were rendered by deponent and by Sherwood Hall, Esquire.

Deponent has been a member of the Bar of the State of New York since June, 1902 and a member of the firm of White & Case since January, 1927. Deponent has had long experience in representation of trustees of railroad mortgages and in the conduct of railroad equity receiverships and proceedings under Section 77 of the Bankruptcy Act. Mr. Hall has been a member of the Bar of the State of New York since November, 1913 and has also had many years of experience in the representation of trustees of railroad mortgages and in the conduct of railroad equity receiverships and proceedings under Section 77.

FITZHUGH MCGREW

Sworn to before me this 11th day of February, 1941.

CHARLES KEATING RICE

Charles Keating Rice

Notary Public, Kings County

Kings Co. Clk's No. 123, Reg. No. 2141

Certificate filed in New York Co., N. Y.

N. Y. Co. Clk's No. 884, Reg's No. 2R556

Commission expires March 30, 1942

(Notarial Seal)

[fol. 76]

## Schedule B

Bankers Trust Company, Trustee under  
 Refunding Mortgage, dated August 23, 1901,  
 of The Kansas City, Fort Scott & Memphis  
 Railway Company, and St. Louis-San Fran-  
 cisco Railway Company,  
 16 Wall Street,  
 New York City, New York

To Bryan, Williams, Cave & McPheeters  
 1630 Boatmen's Bank Bldg.—Saint Louis

January 31, 1941

To professional services rendered to Bankers  
 Trust Company, as corporate trustee under the  
 Refunding Mortgage dated August 23, 1901 of  
 The Kansas City, Fort Scott & Memphis Rail-  
 way Company, from December 24, 1932 to and  
 including January 31, 1941, the details of which  
 services are set forth in the affidavit of Rhodes  
 E. Cave, attached hereto and made a part hereof \$6,000.—  
 Disbursements ..... 24.28

[fol. 77]

## Affidavit of Rhodes E. Cave.

In the  
 District Court of the United States  
 Within and for the Eastern Division of the Eastern  
 Judicial District of Missouri.

In the Matter of

St. Louis-San Francisco Railway  
 Company, a corporation,  
 Debtor.

In Proceedings  
 for the  
 Reorganization  
 of a Railroad.  
 No. 7004.

United States of America  
 Eastern District of Missouri  
 City of St. Louis  
 State of Missouri } ss. :

RHODES E. CAVE, being duly sworn, deposes and says:

I am a member of the firm of Bryan, Williams, Cave &  
 McPheeters, 1630 Boatmen's Bank Building, St. Louis, Mis-  
 souri, which has acted as local counsel for Bankers Trust

Company, as the corporate trustee under the Refunding Mortgage, dated August 23, 1901, of The Kansas City, Fort Scott & Memphis Railway Company, and I make this affidavit in support of the bill of Bryan, Williams, Cave & McPheeters, dated January 31, 1941, rendered to Bankers Trust Company, in the amount of \$6,000, covering the services of Bryan, Williams, Cave & McPheeters as such counsel.

[fol. 78] Bryan, Williams, Cave & McPheeters maintains an office record in which the partners and associates make contemporaneous entries showing the nature of the services rendered by them on various matters on which they are engaged, and the time devoted thereto. This record does not purport to cover every activity of the partners and associates. Only matters requiring a substantial amount of time are recorded. The record is kept as a reminder of substantial amounts of time spent on matters which might otherwise escape, rather than as a detailed and accurate account of all time spent by the various partners and associates. The following is a detailed and specific account, prepared from such records, from the correspondence files and from the pleadings and other records in the case:

1932

December Received wire from White & Case, asking whether this firm available to act with them in representing Bankers Trust Company, as trustee under Refunding Mortgage of The Kansas City, Fort Scott & Memphis Railway Company, in St. Louis-San Francisco Railway Company receivership proceedings; (Hereinafter the above mortgage will be referred to as the "Fort Scott Mortgage", the St. Louis-San Francisco Railway Company as the "Debtor", and the Bankers Trust Company as "Mortgage Trustee");

Answer to wire advising this firm available;



1932

Receipt of day letter from White & Case regarding proposed application of receivers to issue \$3,000,000 receivers' certificates, also advising of forwarding petition of Bankers Trust Company for leave to appear specially [fol. 79] cially and form of proposed order; also instructing to execute petition and approve order, subject to our judgment that doing so would not subject the Trustee or the trust res to the jurisdiction of the court, subject also to satisfactory proof that Debtor's equity in the equipment proposed to be bought with the proceeds of receivers' certificates would be equal to face value of receivers' certificates and to our judgment that proposed order made adequate provision for cancellation of equipment trust obligations;

December Long distance telephone conversation with Mr. Wade of White & Case;

Conference with Mr. Miller of the Frisco, counsel for Central Hanover Bank & Trust Company and Chase National Bank in regard to proposed receivers' certificates;

Examination of draft of order proposed to be entered authorizing the issuance of receivers' certificates by primary court and similar orders to be entered in ancillary jurisdictions;

Consideration of incorporation in decree of provision for subroga-

1932

tion to the rights of lien holders whose claims are paid with proceeds of receivers' certificates in the event property subject to Fort Scott Mortgage should be called upon to pay receivers' certificates;

Advice in this regard to White & Case;

Attendance in court at hearing upon issuance of receivers' certificates;

Forwarding copies of various orders as entered to White & Case; [fol. 80] Receipt from White & Case of letter concurring in opinion as to incorporation in decree of provision for subrogation.

Approximate time ..... 20 hours

1933

January

Receipt of letter from White & Case advising of proposed petition of receivers for authority to make additions and betterments and to make loans to subsidiary companies; stating position of White & Case with reference to notices in advance of applications in proceeding, requesting also that this firm give consideration to the question as to when payment of accrued taxes, equipment trust obligations, mortgage interest, etc. would adversely affect the rights of preferred creditors, and requesting that this firm obtain an estimate, if possible, of the amount of six months' pre-receivership claims;

1933

Examination of cases cited in letter;

Legal research and consideration of questions raised;

Letter to Mr. Miller of Debtor requesting advice as to the probable amount of six months' pre-receivership claims;

Letter to White & Case discussing legal questions raised in their letter of January 12th; further letter to Mr. Miller requesting advice as to amount of six months' pre-receivership claims.

Approximate time ..... 7 hours

February Correspondence with Mr. Miller and with White & Case regarding probable amount of six months' claims;

Estimated time ..... 1½ hours

October Correspondence with White & Case and Mr. Miller of Debtor with [fol. 81] respect to service in advance of notices and copies of applications, motions, etc. filed in court;

Correspondence with White & Case, enclosing copies of their correspondence with counsel for other mortgage trustees;

Legal research and consideration of question of the necessity of mortgage trustees' intervening in court and filing petitions in order to have income of mortgaged properties impounded for benefit of bondholders, with special reference to rulings on

1933

above questions in Missouri and adjacent jurisdictions.

Approximate time ..... 10 hours

November

Examination and consideration of proof of proposed petition for intervention; comparison of recording data in petition with records of Debtor; letter of advice with regard thereto;

• Correspondence with White & Case regarding hearings on application for petition for abandonment of portion of line of Kansas City, Clinton & Springfield Railway;

Consideration of petition for leave to intervene upon hearing on application for abandonment; service and filing same;

Conference with counsel for Debtor's Trustee regarding postponement of hearing on petition to abandon;

Conference with District Clerk as to setting of hearing;

Conference with counsel for Debtor's Trustee regarding proof to be adduced upon hearing of petition for abandonment;

Further correspondence and telegrams with White & Case on abandonment proceedings;

[fol. 82] Further conference with counsel for Debtor's Trustee concerning proof to be submitted at hearing; and consideration of proposed order of court;

Attendance in court at hearing upon petition for abandonment;

1933

Further correspondence with White & Case in regard to abandonment proceedings.

Approximate time ..... 18 hours

December

Examination and consideration of petition of Mortgage Trustee for leave to intervene and for impounding of income, and of legal questions discussed in letter transmitting same; procuring signature to petition; correspondence regarding same;

Legal research and correspondence with respect to right of Mortgage Trustee to have income impounded;

Approximate time ..... 12 hours

1934

January

Preparation and service of notices on all parties of filing petition for leave to file intervening petition;

Attendance in court to obtain setting of hearing on petition;

Correspondence and telegrams with White & Case with regard to nature of order as to hearing on petition for leave to file intervening petition, also as to questions to be considered by the court upon the hearing;

Procuring copy of order entered on January 3rd;

Further conference with court and counsel for Debtor's Trustee, and letters advising that hearing on January 29th would be confined to question of intervention [fol. 83] and would not deal



with question of impounding or segregating income;

Correspondence as to brief on petition for intervention and as to position of Mortgage Trustee with respect to issuance of trustee's certificates for improvement of transportation facilities;

Conference with counsel for Debtor's Trustee with regard to setting of application for leave to issue trustee's certificates;

Further telegrams and correspondence with White & Case as to appearance in opposition to application for leave to issue trustee's certificates, and postponement of hearing before Master on issuance of trustee's certificates;

Further correspondence with White & Case regarding objections to issuance of trustee's certificates, and suggested procedure before the Master with respect to opportunity to file objections and briefs;

Legal research and correspondence with White & Case regarding authority to issue trustee's certificates;

Further correspondence with White & Case regarding appearance before Master in opposition to issuance of trustee's certificates;

Consideration of brief upon petition for leave to intervene;

Attendance at hearing before Spe-

1934

cial Master on issuance of trustee's certificates;

Further correspondence with White & Case regarding procedure with respect to issuance of trustee's certificates;

[fol. 84] Attendance in court and presentation of petition for leave to intervene;

Correspondence with White & Case as to same.

Approximate time ..... 25 hours

February

Correspondence with White & Case, requesting information with respect to segregation of proceeds of oil leases, also respecting whether proposed issuance of trustee's certificates to cover maturities of Kansas City, Memphis & Birmingham bonds contemplated cancellation and payment of bonds or purchase of bonds to be pledged with RFC;

Conference with counsel for Debtor's Trustee and procuring above information;

Further correspondence with White & Case regarding same;

Correspondence with White & Case with regard to appearance at hearing on application of Central Hanover Bank for segregation of revenues from oil leases and with regard to securing order for segregation of similar revenues with respect to Kansas City, Fort Scott & Memphis bondholders;

1934

Conference with counsel for Debtor's Trustee with regard to oil properties covered by Fort Scott Mortgage;

Attendance in court at hearing on application of Central Hanover Bank.

Approximate time ..... 8 hours

March

Correspondence - with White & Case in regard to court's ruling on petition of Mortgage Trustee for leave to intervene;

Correspondence with White & Case as to setting of hearing on petition of prior lien mortgage trustees for segregation of [fol. 85] oil revenues and as to securing similar order with respect to any oil properties which might be subject to lien of Fort Scott Mortgage;

Further correspondence as to same;

Attendance at hearing before Special Master on petition of prior lien mortgage trustees for segregation of oil revenues;

Correspondence with White & Case as to same;

Correspondence as to action of Judge Faris on application of United States for leave to intervene;

Correspondence with White & Case as to order entered by Judge Faris permitting Mortgage Trustee to intervene specially;

1934

Conference with Judge Faris upon same;

Further correspondence with respect to effects of order permitting special intervention and possibility of obtaining order for leave to intervene generally.

Approximate time ..... 12 hours

April

Further correspondence with White & Case concerning right of Mortgage Trustee to intervene generally;

Correspondence with White & Case and conferences with Debtor's Trustee with regard to service with advance notice of all applications;

Correspondence with White & Case as to setting of hearings upon petition of Mortgage Trustee for segregation of income;

Correspondence with White & Case and counsel for Central Hanover Bank & Trust Company in regard to testimony of Mr. Kurn that certain oil leases had [fol. 86] been executed with respect to lands covered by Fort Scott Mortgage;

Examination of answer of Bankruptcy Trustee to petition of Mortgage Trustee for leave to intervene and for segregation of income;

Analysis of the same and correspondence with White & Case with regard to portions of above petition admitted by answer and portions which would require proof;

1934

Consideration of answer of prior lien mortgage trustees to Mortgage Trustee's petition for segregation and correspondence with White & Case regarding same;

Correspondence with White & Case as to petition of Debtor's Trustee for leave to pay interest on certain bonds;

Correspondence with White & Case as to setting of date for hearing on petition for segregation;

Correspondence with White & Case as to entry in printed record of an order permitting special intervention of Mortgage Trustee;

Approximate time ..... 11 hours

May

Further correspondence with White & Case as to attendance at hearing on application for payment of interest;

Further correspondence as to correction of order allowing special intervention;

Legal research and correspondence with White & Case regarding recent cases on question of segregation of earnings;

Further correspondence as to proper entry of order permitting special intervention;

Conference with counsel for Debtor [fol. 87] or Trustee with regard to correction of order permitting special intervention.

Approximate time ..... 8½ hours



1934

June

Correspondence with counsel for Debtor's Trustee as to incorporation in printed record of order permitting special intervention;

Further correspondence as to same;

Correspondence regarding service of notices of all applications and petitions.

Approximate time ..... 1½ hours

September

Correspondence with White & Case, and counsel for Debtor's Trustee as to service of notices of all applications and petitions.

Approximate time ..... ¾ hour

October

Attendance at hearing before Special Master on proposed investigation as to solvency or insolvency of Debtor;

Report of proceedings to White & Case.

Approximate time ..... 5 hours

1935

June

Attendance in court to obtain additional time for filing answer to petition of Chase National Bank;

Correspondence with White & Case re same;

Attendance at hearing in Federal Court;

Consideration, execution and filing of answer of Mortgage Trustee to petition of Chase National Bank;

Correspondence with White & Case and with counsel for Chase National Bank regarding same;

Approximate time ..... 5 hours

1935

November

Conference with counsel for Debtor's Trustee, examination of papers in court and correspondence with White & Case in regard to report of Special Master [fol. 88] on claim of J. H. McCommon, giving said claim priority over lien of Fort Scott Mortgage.

Approximate time ..... 6 hours

December

Conference and correspondence with White & Case and with counsel for Debtor's Trustee, and examination of records at Clerk's office re failure of Debtor's Trustee to file report as to segregation of earnings of property subject to Fort Scott Mortgage;

Further correspondence with reference to advisability of further action to require Debtor's Trustee to file such reports;

Correspondence with White & Case with reference to payment of interest on Kansas City, Memphis & Birmingham bonds pledged under Fort Scott Mortgage;

Examination and consideration of petition of Debtor's Trustee as to payment of interest on bonds of Kansas City, Memphis & Birmingham Railroad;

Further correspondence with White & Case as to hearing before Special Master on petition for instructions as to payment of interest on Kansas City, Memphis & Birmingham bonds and

1935

as to further steps to be taken to apply to the year 1935 the formula for segregation set forth in Order No. 43;

Approximate time ..... 12 hours

1936

January

Correspondence with White & Case concerning position of Mortgage Trustee with respect to petition of prior lien mortgage trustees for delivery of common stock of Gulf, Mobile & Northern Railway Company;

[fol. 89] Attendance at hearing before Special Master on motion of Debtor's Trustee for instruction as to payment of interest on certain bonds of Kansas City, Memphis & Birmingham Railroad and upon petition of prior lien mortgage trustees with respect to shares of common stock of Gulf, Mobile & Northern Railway Company;

Report to White & Case of proceedings.

Approximate time ..... 8 hours

April

Correspondence with White & Case, and correspondence with Debtor's Trustee re abandonment of certain lines not subject to Fort Scott & Memphis mortgage, also with respect to abandonment of certain lines subject to Fort Scott & Memphis mortgage, and with respect to deposit of proceeds of salvage of any of the later lines abandoned with Mortgage Trustee;

1936

Further correspondence with White & Case as to payment of interest on Kansas City, Memphis & Birmingham bonds pledged with Mortgage Trustee.

Approximate time ..... 1½ hours

June

Correspondence with counsel for Debtor and with White & Case with reference to application for extension of time for filing plan of reorganization;

Consideration of answer of Railroad Credit Corporation to petition for extension of time for filing plan of reorganization;

Attendance at Federal Court;

Approximate time ..... 3 hours

October

Attendance in Federal Court... 1½ hours

December

Attendance in court at hearing on petition of Fort Scott Bondholders' Committee for payment of past due interest;

[Vol. 90] Conference with counsel for Debtor's Trustee as to payment of past due interest;

Examination and consideration of answer of Debtor's Trustee to petition of Fort Scott Mortgage Bondholders' Committee for payment of past due interest;

Correspondence with White & Case regarding same.

Approximate time ..... 5 hours

1937

January

Correspondence with White & Case and counsel for Debtor's Trustee in regard to deposit

1937

with Mortgage Trustee of proceeds of sale of obsolete equipment

Approximate time ..... 3¼ hours

February Attendance at hearing before Special Master on application of Fort Scott Mortgage Bondholders' Committee for payment of past due interest;

Report to White & Case re same.

Approximate time ..... 8 hours

June

Extended correspondence and conferences with counsel for Debtor's Trustee with reference to proposed sale of locomotives covered by Fort Scott Mortgage and deposit of proceeds of sale with Mortgage Trustee, and to execution of proper certificates and releases in accordance with mortgage;

Correspondence with White & Case concerning petition of Guy Williams for payment of claim for personal injuries as a preferred claim; investigation of history and status of proceedings;

Approximate time ..... 7½ hours

December

Filing and service of copies of memorandum in support of petition of Fort Scott Mortgage Bondholders' Committee for payment of past due interest;

Checking with railroad's lists of parties required to be served.

Approximate time ..... 3 hours



1938

April

Correspondence with White & Case and correspondence with counsel for prior lien mortgage trustees in regard to motion for payment to them of certain collateral and dividends;

Attendance in court regarding same.

Approximate time ..... 2½ hours

July

Conference with counsel for Debtor's trustee and attendance in court on above motion;

Correspondence with White & Case regarding proposed removal of certain roundhouse facilities at Springfield, Missouri.

Approximate time ..... 4 hours

August

Examination of railroad's records with respect to value of roundhouse facilities at South Springfield, Missouri, and examination of proposed orders with respect to deposit of proceeds of sale with Mortgage Trustee;

Correspondence re same.

Approximate time ..... 3 hours

September

Correspondence and conferences with counsel for Debtor's Trustee regarding deposit with Mortgage Trustee of proceeds of salvage of certain obsolete locomotives and cars.

Approximate time ..... 1 hour

November

Correspondence regarding petition of prior lien mortgage trustees for delivery of certain securities and obligations of subsidiary companies.

Approximate time ..... ¾ hour

[fol. 92] The foregoing comprises only those matters which required the specific and substantial attention of this firm.

In addition, affiant undertook to read all petitions, orders and applications, etc. received during the course of the proceedings to determine whether or not the same might be of interest or of possible interest to the Bankers Trust Company, as trustee under the Fort Scott Mortgage. In a great many cases where such matters might be of possible interest, request was made to White & Case for instructions as to any action to be taken. In the case of a larger number having to do with administrative matters which obviously did not affect the interests of Bankers Trust Company, no such requests were made. Our records show that the total number of such applications, petitions, orders, opinions, etc. (exclusive of accounting reports which were not examined or read and of proposed plans of reorganization, for the examination of which no time is being allotted) amounted to approximately 500, all of which were read and considered.

Affiant is unable to approximate with any degree of accuracy the number of hours involved, except to estimate that the average time for the examination and consideration of such petitions, orders, etc. would be approximately 15 minutes each, requiring a total of 125 hours. It is affiant's best estimate that correspondence of a perfunctory nature not devoted to matters set out specifically above throughout the eight years of the pendency of these proceedings, would be approximately 15 hours.

All of the foregoing services were performed under the direct supervision of affiant who is the senior partner of this firm. All of such services, except for attendance in court with respect to settings and attendance at a number of hearings before the Special Master and examination and checking of records in court or at the offices of [fol. 93] the railroad, were personally performed by the affiant, who has been a member of the Bar of the State of Missouri since 1899, and has had long experience in corporate and railroad equity receiverships and reorganizations both before and after 1932. Those hearings not attended by the affiant personally were attended by Mr. Crawford Johnson, who has been a member of the Bar of the State

of Missouri since 1925 and a member of this firm since 1936, and who has had extensive experience since 1931 in corporate and railroad equity receiverships and reorganizations. The negligible balance of the services was performed by associates of the firm.

In so far as possible, there has been no duplication by this firm of services performed by White & Case.

Affiant further states that a detailed statement of all expenses incurred by this firm in connection with these proceedings is set forth herewith below:

1/ 9/33	Telegram .....	\$ .82
2/ 3/33	Telephone calls .....	11.70
12/ 6/33	Telegrams .....	1.29
1/12/34	Telegram .....	.94
2/ 7/34	Telegrams .....	3.21
3/ 6/34	Telegrams .....	4.93
11/30/34	Postage .....	.39
7/ 8/35	Telegram .....	1.00

\$24.28

RHODES E. CAVE.

Subscribed and sworn to before me this 6th day of February, 1941.

RUTH F. WEAKLY,  
Notary Public.

(Seal)

My commission expires July 4, 1941.

[fol. 94]

## Schedule C.

Kansas City, Fort Scott and Memphis  
Railway Company

Refunding Mortgage Dated August 23, 1901

Disbursements of Bankers Trust Company as Trustee, up to  
and including January 31, 1941:

## I. Payments to Counsel:

Messrs. White & Case, New York, N. Y.  
in reimbursement for expenses in-  
curred, as follows:

Bill dated December 31, 1932

1932

Dec. 24	Telegram .....	\$ 1.70
31	Telegram .....	5.10
		<hr/>
		\$ 6.80

Bill dated March 8, 1933

1933

Jan. 3	Telephone tolls .....	\$ 15.90
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Bill dated March 26, 1934

1933

Nov. 18	Telegrams .....	\$ 1.40
Dec. 29	Postage on Air Mail .....	21.83

1934

Jan. 4	Postage .....	14.51
20	Telegrams .....	6.95
Feb. 26	Telegrams .....	2.29
		<hr/>
		\$ 46.98

Bill dated October 24, 1934

1934

Mar. 31	Telegram .....	\$ 2.73
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[fol. 95] Bill dated November 17, 1937

1936

Nov. 28	Printing petition for leave to in- tervene before Interstate Com- merce Commission .....	\$ 21.69
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Dec. 1	Expense trip to Washington by Mr. Hueston—three days .....	43.50
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12	Telegram .....	1.51
		<hr/>
		\$ 66.61

## Bill dated March 1, 1939

1938

May 14 Telephone tolls for May.....\$ 3.70

Nov. 1 Expense of trip to Washington  
by Mr. Hueston—two days—to  
attend hearing before the In-  
terstate Commerce Commission:  
Carfare .....\$16.04  
Hotel ..... 5.00  
Meals ..... 5.05  
Miscellaneous ..... 3.15 29.24

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\$ 32.94

## Bill dated April 1, 1939

1937

Dec. 13 Postage .....\$ .84

1938

Feb. 15 Telephone tolls for February.... 1.35

Apr. 9 Telegrams ..... 4.89

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\$ 7.08

## Bill dated December 30, 1939

1939

July 8 Telegram .....\$ .95

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Total Paid to Counsel..... \$179.99

## [fol. 96] II. Payments for Printing:

The Ballou Press, New York, N. Y. in  
payment of their bills:

## Bill dated January 6, 1934

Printing Petition for leave to intervene;  
petition for order granting leave to in-  
tervene and Order granting leave to in-  
tervene in Court Reorganization pro-  
ceedings including alterations, proofs  
and cancellations .....\$484.25

New York State Sales Tax..... 4.85

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\$489.10



Bill dated January 17, 1934

1934

Jan. 16 Printing Brief in support of Petition of Bankers Trust Company and Walter W. Smith, as Successor Trustees under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Co. etc.....\$ 8.50  
New York State Sales Tax..... .09

\$ 8.59

Total Paid for Printing..... \$497.69

[fol. 97] III. Miscellaneous expenses of Bankers Trust Company:

Expenses of trip to Washington, D. C. on February 8 and 9, 1938, made by A. W. Bachman and H. Ahrens of Bankers Trust Company and F. McGrew of White & Case

Transportation .....\$47.70  
Hotels ..... 19.85  
Meals ..... 11.85  
Taxi ..... 1.50  
Telephone calls ..... .35  
Sundry ..... 3.80 \$85.05

Registered mail postage and insurance costs ..... 5.15

Total of Miscellaneous Expenses.\$ 90.20

Grand Total ..... \$767.88

[fol. 98] Petition of Bankers Trust Company as Corporate Trustee Under the Refunding Mortgage of The Kansas City, Fort Scott & Memphis Railway Company for allowance of Compensation and Expenses.

(Filed February 15, 1941.)

[Petition for Allowance No. 267.]

To the Honorable Judges of the District Court of the United States, for the Eastern District of Missouri:

The petition of Bankers Trust Company as Corporate Trustee under the Refunding Mortgage, dated August [fol. 99] 23rd, 1901, of The Kansas City, Fort Scott & Memphis Railway Company, respectfully shows:

1. That Petitioner (hereinafter sometimes called the "Corporate Trustee") is and has been since March 24, 1903, a corporation duly organized and existing under the Banking Laws of the State of New York, duly empowered to act as trustee under corporate mortgages, and is Successor Corporate Trustee under the Refunding Mortgage (hereinafter sometimes called the "Mortgage") made by The Kansas City, Fort Scott & Memphis Railway Company to The Mercantile Trust Company and William H. Thompson, as Trustees, a copy of which Mortgage and the Supplements thereto were filed with this Court on December 29, 1933, and the Corporate Trustee begs leave to refer to the same and to the provisions thereof with the same force and effect as if the same were fully set forth herein.

2. That the Mortgage was duly executed, acknowledged and delivered in all respects in conformity with law, and upon the execution and delivery thereof, was properly and duly recorded in each jurisdiction in which the properties described in the granting clauses of the Mortgage were located.

3. That the Corporate Trustee is filing herein its Petition dated February 11, 1941, for its compensation and expenses as Corporate Trustee in the aggregate amount

as in said Petition set forth as a claim secured by a prior lien or charge upon the property covered by the lien of the Mortgage, including the deposited cash held by the Corporate Trustee thereunder, and in form to meet the provisions of the Order in these proceedings No. 242 [fol. 100] dated December 30, 1940, with respect to petitions for compensation for services and expenses incurred otherwise than under clause (12) of subsection (c) of Section 77 of the Bankruptcy Act. In said Petition the Corporate Trustee claims that said Section 77 (c) (12) is not applicable to the Corporate Trustee or if applicable then it challenges the constitutionality of said Section 77 (c) (12), and requests this Court itself to determine the amount and extent of the lien or charge of the Corporate Trustee for its compensation and expenses (including compensation and expenses of its counsel) and for other relief.

4. In order, however, to protect the Corporate Trustee's rights and remedies in the event that (notwithstanding the objections of the Corporate Trustee as stated in said Petition dated February 11, 1941 and notwithstanding the contention therein and herein contained that the services and expenses of the Corporate Trustee have not been rendered or incurred "in connection with the proceedings and plan" and have not been rendered or incurred for the benefit of the Debtor's general estate within the meaning of Section 77 (c) (12) of the Bankruptcy Act) it shall be determined by this Court that said Section 77 (c) (12) is applicable to the Corporate Trustee, the Corporate Trustee files this petition to meet the provisions of the Order in these proceedings No. 242 relating to petitions for compensation for services and expenses incurred under clause (12) of sub-section (c) of Section 77 of the Bankruptcy Act, and this petition is filed without prejudice to or waiver of the prior lien or charge afforded the Corporate Trustee under the Mortgage upon the Mort- [fol. 101] gaged Estate, including deposited cash, for payment in full of its compensation and expenses, and without prejudice to or waiver of the contentions set forth in the above mentioned Petition dated February 11, 1941, a copy of which is annexed hereto and all of the allegations of which, Nos. 1 to 32 inclusive, together with the Sched-

ules attached thereto, are made a part of this petition with the same force and effect as if each such allegation were set forth at length herein. The Corporate Trustee reserves its right hereafter to apply for compensation for services rendered and reasonable expenses necessarily incurred and actually disbursed by it after January 31, 1941.

5. That, on information and belief, the services and expenses of the Corporate Trustee as set forth in said Petition dated February 11, 1941 and made a part of this petition, were rendered and incurred by the Corporate Trustee in the execution of the trusts created by the Mortgage and in the exercise of the powers and duties conferred upon the Corporate Trustee thereunder; and that said services and expenses have not been rendered or incurred "in connection with the proceedings and plan" and have not been rendered or incurred for the benefit of the Debtor's general estate within the meaning of Section 77 (c) (12) of the Bankruptcy Act; and that therefore, upon information and belief, said Section 77 (c) (12) of the Bankruptcy Act and the jurisdiction of the Interstate Commerce Commission thereunder do not apply to the Corporate Trustee in respect of the services and expenses constituting the subject matter of this Petition.

[fol. 102] 6. That the reasonable value of said services and expenses is not less than the sum of Twenty-six thousand seven hundred ninety-two and 16/100 Dollars (\$26,792.16).

Wherefore, without prejudice to the aforesaid Petition of the Corporate Trustee dated February 11, 1941, and the claims asserted thereunder or the herein referred to prior lien or charge of the Corporate Trustee upon the Mortgaged Estate, including deposited cash, but subordinately auxiliary thereto and in aid and furtherance thereof, the Corporate Trustee claims:

1. The sum of Ten thousand Dollars (\$10,000) for its services, and
2. The sum of Sixteen thousand seven hundred ninety-two and 16/100 Dollars (\$16,792.16) for its

reasonable expenses necessarily incurred and actually disbursed under the Mortgage.

**BANKERS TRUST COMPANY,**

By **E. E. BEACH,**

Vice-President.

**WHITE & CASE,**

**BRYAN, WILLIAMS, CAVE &**

**McPHEETERS,**

Counsel for Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage.

Dated, February 13, 1941.

(Verification and copy of Petition dated February 11, 1941, omitted in printing. See Printed Petition for Allowance No. 266, dated February 11, 1941.)

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[fol. 103] (Order of District Court permitting Intervention of Reconstruction Finance Corporation.)

(Filed July 7, 1934.)

This cause this day having come on to be heard on the petition of the Reconstruction Finance Corporation for leave to intervene herein, and it appearing to the Court that all parties of record have been duly notified of the hearing, and for good cause shown, the Court being fully advised in the premises, finds that the prayer of said petition for a general intervention should be denied; that the prayer of said petition for a special intervention should be granted, it is therefore,

Ordered, Adjudged and Decreed

That said Reconstruction Finance Corporation is hereby given leave to intervene especially to protect and fully conserve, its rights mentioned in its petition and is hereby admitted and constituted a special party to this cause, with the right to have notice served on its counsel or any of them, to file motions, answers, pleadings, and other papers in said matters to be heard by testimony and by



argument, and to take such other steps and proceedings in this cause as it may deem proper to protect and conserve its said rights, interests and property in the estate of the Debtor or Debtors herein; provided, however, that the Court reserves the right to enter orders pursuant to petitions or motions of the Trustees herein without notice thereof to any party or parties, where, in the judgment of the Court, such notice is not necessary to protect the interests of any such party not served with notice.

It Is Further Ordered that the Trustees of the St. Louis-San Francisco Railway Company are granted twenty days from July 7, 1934, in which to answer said intervening petition.

C. B. FARIS,  
United States District Judge.

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[fol. 104] Order Allowing Compensation and Expenses to Bankers Trust Company, as Corporate Trustee Under the Refunding Mortgage of The Kansas City, Fort Scott and Memphis Railway Company.

(Filed June 30, 1941.)

[Order No. 296.]

This cause having come on for hearing April 4, 1941, on the petition of Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of The Kansas City, Fort Scott and Memphis Railway Company, for compensation and expenses as such Corporate Trustee, said petition being dated February 11, 1941, and having been filed herein February 15, 1941, and the Court having considered said petition and the arguments of counsel, and being fully advised in the premises, it is

Ordered, Adjudged and Decreed:

1. That paragraph (c) (12) of Section 77 of the Bankruptcy Act, as amended, is not applicable to Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of The Kansas City, Fort Scott and Memphis Railway Company, dated August 23, 1901, with respect to its said

claim for compensation and expenses as such Corporate Trustee.

2. That Bankers Trust Company, as such Corporate Trustee, under the provisions of said Mortgage is entitled to reasonable compensation for services rendered and reasonable expenses necessarily incurred and actually disbursed by it as such Corporate Trustee, and under the provisions of said Mortgage such compensation and expenses are a charge on the trust estate subject to said Mortgage.

3. That there is due to Bankers Trust Company, as such Corporate Trustee, (a) the sum of \$10,000 as reasonable compensation for services rendered by it under said Mortgage to and including January 31, 1941, and (b) the sum of \$16,792.16 for reasonable expenses (including compensation to its counsel, White & Case, in the sum of \$10,000, plus \$179.99 expenses, and Bryan, Williams, Cavé & McPheeters, in the sum of \$6,000, plus \$24.28 expenses) necessarily incurred and disbursed by it up to and including January 31, 1941, amounting in the aggregate to \$26,792.16.

4. That Bankers Trust Company, as such Corporate Trustee, is entitled to a proper charge in the aggregate sum of \$26,792.16 upon the cash deposited with it under said Mortgage; and that it be and hereby is authorized to pay and satisfy said charge out of said deposited cash and to take proper credit for such disbursement in accounting for such deposited cash.

GEO. H. MOORE,  
District Judge.

Dated June 30, 1941.

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[fol. 107] (Order extending time to file Transcript on Notice of Appeal filed in District Court.)

(Filed September 4, 1941.)

On oral application of Reconstruction Finance Corporation, appellant, and for good cause shown, it is ordered that the time for filing transcript in the appeal taken July 28, 1941, by Reconstruction Finance Corporation from the

order numbered 290, dated June 30, 1941, allowing compensation and expenses to Bankers Trust Company, as Corporate Trustee under Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, is hereby extended to September 30, 1941.

Dated this 4th day of September, 1941. ○

CHARLES B. DAVIS,  
Judge.

[fol. 108] (Order further extending time to file Transcript on Notice of Appeal filed in District Court.)

(Filed September 26, 1941.)

On oral application of Reconstruction Finance Corporation, appellant, and for good cause shown, it is ordered that the time for filing transcript in the appeal taken July 28, 1941, by Reconstruction Finance Corporation from the order numbered 290, dated June 30, 1941, allowing compensation and expenses to Bankers Trust Company, as Corporate Trustee under Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, is hereby further extended to October 20, 1941.

GEO. H. MOORE,  
Judge.

[fol. 109] Designation of Contents for Record on Appeal.

(Filed October 10, 1941.)

To James J. O'Connor, Clerk of the United States District Court of the Eastern Division, Eastern Judicial District of Missouri:

You will please incorporate in the transcript of record on appeal to the United States Circuit Court of Appeals to the Eighth Circuit on the appeal of Reconstruction Finance Corporation from the order of June 30, 1941, on the petition of Bankers Trust Company, as Corporate Trustee

under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, for compensation and expenses.

1. Agreed statement showing how the questions arose and were decided by the Court as provided by Rule 76 of the Rules of Civil Procedure.

2. Order dated September 4th, 1941, extending time for filing transcript to September 30, 1941.

3. Order dated September 26, 1941, extending time for filing transcript to October 20, 1941.

4. This designation of contents for record with service.

5. Clerk's certificate.

6. To be added by the Clerk of the United States Circuit Court of Appeals before printing the following:

a. Petition of Reconstruction Finance Corporation for an appeal, dated July 25, 1941, together with assignment of errors attached thereto.

[fol. 110] b. Order, dated July 28, 1941, allowing appeal consolidating transcript with transcript filed under this designation and extending to September 30, 1941, the time for filing transcript.

c. Order dated .... day of September, 1941, extending time for filing transcript to October 20, 1941.

d. Citation.

e. Clerk's certificate.

Dated at St. Louis, Missouri this 9th day of October, 1941.

**RECONSTRUCTION FINANCE CORPORATION,**

By **RUSSELL L. SNODGRASS,**

**ROBERT D. EVANS,**

**HENNINGS, GREEN, HENRY & EVANS,**

1130 Boatmen's Bank Building,

St. Louis, Mo.,

Its Attorneys.

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[fol. 111] Clerk's Certificate of Transcript.

United States of America,  
Eastern Division of the Eastern, } ss.  
Judicial District of Missouri,

I, James J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, Do Hereby Certify the above and foregoing to be a full, true and complete transcript (except insofar as the same is restricted by the designation of the record on appeal heretofore set out) of the record and proceedings in case No. 7004, in the Matter of St. Louis-San Francisco Railway Co., In Proceedings For The Reorganization of a railroad, as fully as the same remains on file and of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, in said Division of said District this 17th day of October, in the year of our Lord Nineteen Hundred and Forty-one.

JAMES J. O'CONNOR,  
Clerk of U. S. District Court,

(Seal)

By JOHN J. JARVIS,  
Deputy Clerk.

Filed Oct. 17, 1941. E. E. Koch, Clerk.

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[fol 112] (Notice of Appeal Filed in United States Circuit Court of Appeals and Acknowledgment of Service.)

In the United States Circuit Court of Appeals  
Eighth Circuit.

Reconstruction Finance Corporation,  
Appellant,

vs.

Bankers Trust Company, As Corporate  
Trustee under Refunding Mortgage  
of the Kansas City, Fort Scott &  
Memphis Railway Company,

Appellee.

No. 12,089

In the Matter of  
St. Louis-San Francisco Railway  
Company, a Missouri Corporation,  
Debtor.

No. 7004

In Proceedings for the Reorganization  
of a Railroad.

To Bankers Trust Company, Trustee, or Bryan, Williams,  
Cave & McPheeters, Its Attorneys:

You are hereby notified that the petition of Reconstruction Finance Corporation for an appeal, assignment of errors and order of Judge Moore, dated June 30, 1941, on the petition of Bankers Trust Company, Trustee, for an allowance will be filed with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit on Saturday, July 26th, and will be presented to the Court at St. Paul on Monday, July 28, 1941, at 9:00 A. M. or as soon thereafter as counsel may be heard.

C. M. CLAY,

ROBERT D. EVANS,

Attorneys for Reconstruction  
Finance Corporation.

Copy of the petition of Reconstruction Finance Corporation for an appeal, assignment of errors and copy of court

[fol. 113] order dated June 30, 1941, granting an allowance to Bankers Trust Company, Trustee, and copy of this notice received this 25th day of July, 1941.

**WHITE & CASE,  
BRYAN, WILLIAMS, CAVE & McPHEETERS,**  
Attorneys for Bankers Trust Company.

**FRANK A. THOMPSON,**

[Attorneys] for J. M. Kneeland and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company, Debtor.

[fol. 114] (Petition for Appeal Filed in United States Circuit Court of Appeals.)

In the United States Circuit Court of Appeals  
Eighth Circuit

Reconstruction Finance Corporation,  
Appellant,

vs.

Bankers Trust Company, as Corporate  
Trustee under Refunding Mortgage  
of the Kansas City, Fort Scott &  
Memphis Railway Company,  
Appellee.

No. 12,089.

In the Matter of

St. Louis-San Francisco Railway Com-  
pany, a Missouri Corporation,  
Debtor.

No. 7004

In Proceedings for the Reorganization  
of a Railroad.

To the Honorable Judges of the Court of Appeals for the  
Eighth Circuit:

Reconstruction Finance Corporation, your petitioner,  
who is an intervener in the above entitled cause, feeling  
aggrieved by the order of the Honorable George H. Moore,

Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, entered on June 30, 1941, finding that section 77 (c) (12) of the Bankruptcy Act is not applicable to the Bankers Trust Company, Trustee, with respect to its claim for compensation, and allowing compensation and expenses to Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company in the total sum of \$26,792.16, on the petition of Bankers Trust Company, Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, for compensation and expenses rendered by it and its attorneys, prays that it may be permitted to take an appeal from the order and judgment to this Honorable Court for the reasons specified in the assignment of errors which is filed herewith.

C. M. CLAY,

Washington, D. C.,

ROBERT D. EVANS,

St. Louis, Mo.,

Attorneys for Reconstruction Finance Corp.

Dated July 25, 1941

[fol. 115] (Assignment of Errors Filed in United States Circuit Court of Appeals.)

In the United States Circuit Court of Appeals  
Eighth Circuit

Reconstruction Finance Corporation,  
Appellant,

vs.

Bankers Trust Company, as Corporate  
Trustee under Refunding Mortgage  
of the Kansas City, Fort Scott &  
Memphis Railway Company,  
Appellee.

No. 12,089.

In the Matter of

St. Louis-San Francisco Railway Com-  
pany, a Missouri Corporation,  
Debtor.

No. 7004

In Proceedings for the Reorganization  
of a Railroad.

Comes now the said Reconstruction Finance Corporation, intervener, appellant in the above entitled cause, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith prayed for in said cause from the order and judgment of the Honorable George H. Moore, Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, entered June 30, 1941, on the petition of Bankers Trust Company, Trustee, for an allowance of compensation:

1. The Court erred in holding that paragraph (c) (12) of Section 77 of the Bankruptcy Act as amended was not applicable to Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, dated August 23, 1901, with respect to its said claim for compensation and expenses as such Corporate Trustee;

2. The Court erred in granting the Bankers Trust Company an allowance for services rendered and for expenses, [fol. 116-7] including attorneys' fees, prior to the fixing of maximum limits by the Interstate Commerce Commission as required by paragraph (c) (12) of section 77 of the Bankruptcy Act as amended;

3. The Court erred in not finding that the services of the Bankers Trust Company and its attorneys in connection with the proceedings and plan were within the provisions of paragraph (c) (12) of section 77;

4. The Court erred in granting an allowance to the Bankers Trust Company, as Corporate Trustee, for services which were in connection with the proceedings and plan in the absence of the fixing of a maximum by the Interstate Commerce Commission;

5. The Court erred in not denying the petition of the Bankers Trust Company for allowance of compensation;

6. The Court erred in making an allowance of compensation on the petition of Bankers Trust Company in view of the fact that the Court had theretofore transmitted to the Interstate Commerce Commission an identical petition covering the same services for the fixing of maximum limits which had not been acted upon by the Interstate Commerce Commission.

Wherefore, Reconstruction Finance Corporation, intervenor, appellant, prays that the said order and judgment may be reversed and for such other and further relief as to the Court may seem just and proper.

C. M. CLAY,

Washington, D. C.,

ROBERT D. EVANS,

St. Louis, Missouri,

Attorneys for Reconstruction Finance Corporation.

Dated July 25, 1941

(Endorsed): No. 12089. Notice of Appeal, Petition for Appeal and Assignment of Errors. Filed in U. S. Circuit Court of Appeals on July 26, 1941.

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[fol. 118] (Order of United States Circuit Court of Appeals  
Allowing Appeals; Time as to Filing of Transcript.)

In the United States Circuit Court of Appeals  
Eighth Circuit

No. 12089.

May Term, 1941.

Monday July 28, 1941.

Reconstruction Finance Corporation,  
Appellant,

Bankers Trust Company, as Corporate  
Trustee under Refunding Mortgage  
of the Kansas City, Fort Scott &  
Memphis Railway Company,  
Appellee.

In the Matter of

St. Louis-San Francisco Railway Com-  
pany, a Missouri Corporation,  
Debtor.

No. 7004

In Proceedings for the Reorganization  
of a Railroad.

The petition of Reconstruction Finance Corporation, in-  
tervener in the above entitled cause, for an appeal from the  
judgment and order of the Honorable George H. Moore,  
Judge, United States District Court, Eastern Division,  
Eastern Judicial District of Missouri, dated June 30, 1941,  
is hereby granted and the appeal is allowed;

And it further appearing that the Reconstruction Finance  
Corporation is taking an appeal in the same matter in  
the District Court under the provisions of Rule 73 of the  
Rules of Civil Procedure, it is ordered that the appeal  
herein granted be consolidated with the appeal taken  
under the provisions of Rule 73 of the Rules of Civil Pro-  
cedure and that the transcript prepared in accordance

with said Rules of Civil Procedure shall be taken as and for the transcript in this appeal.

It is further ordered that the time for filing transcript in the appeal herein taken is hereby extended to September 30, 1941.

Dated July 28, 1941.

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[fol. 119] (Citation Filed in United States Circuit Court of Appeals and Acknowledgment of Service.)

In the United States Circuit Court of Appeals  
Eighth Circuit

Reconstruction Finance Corporation,  
Appellant,

Bankers Trust Company, as Corporate  
Trustee under Refunding Mortgage  
of the Kansas City, Fort Scott &  
Memphis Railway Company,  
Appellee.

In the Matter of

St. Louis-San Francisco Railway Com-  
pany, a Missouri Corporation,  
Debtor.

No. 7004

In Proceedings for the Reorganization  
of a Railroad.

The President of the United States,

To Bankers Trust Company, as Corporate Trustee under  
Refunding Mortgage of the Kansas City, Fort Scott &  
Memphis Railway Company, Greeting:

You are hereby cited and admonished to be and appear  
in the United States Circuit Court of Appeals for the  
Eighth Circuit to be holden at the City of St. Louis, State

of Missouri, within 40 days from the date hereof, pursuant to an order allowing an appeal from the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri in the proceedings above mentioned on the petition of Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of Kansas City, Fort Scott & Memphis Railway Company, for compensation and expenses, to show cause, if any, there be, why the judgment and orders rendered on said petition June 30, 1941, finding that section 77 (c) (12) of the Bankruptcy Act is not applicable to the Bankers Trust Company, [fol. 120] Trustee, with respect to its claim for compensation and allowing compensation and expenses to Bankers Trust Company, as Corporate Trustee under the Refunding Mortgage of the Kansas City, Fort Scott & Memphis Railway Company, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Archibald K. Gardner, Judge of the United States Circuit Court of Appeals for the Eighth Circuit this 28th day of July, 1941.

ARCHIBALD K. GARDNER,  
United States Circuit Judge.

Service of a copy of the foregoing Citation is hereby acknowledged this 5th day of August, 1941.

WHITE AND CASE,  
BRYAN, WILLIAMS, CAVE & McPHEETERS,  
Attorneys for Bankers Trust Co., Trustee.

FRANK A. THOMPSON,  
by ROBERT H. CHARLES,  
Attorneys for Trustees, St. Louis-San Francisco  
Railway Company.

(Endorsed): No. 12089. Citation. Filed in U. S. Circuit Court of Appeals on August 5, 1941.

[fol. 121] (Order of U. S. Circuit Court of Appeals Extending Time to File Transcript on Appeal Allowed by Appellate Court.)

(Order Extending Time to File Record Until October 20, 1941.)

United States Circuit Court of Appeals  
Eighth Circuit.

No. 12089

May Term, 1941.

Friday, September 26, 1941.

Reconstruction Finance  
Corporation,

Appellant,

vs.

Bankers Trust Company, as  
Corporate Trustee, etc.

} Appeal from the District  
Court of the United  
States for the Eastern  
District of Missouri.

On motion of counsel for appellant, consented to by counsel for the appellee, the time for filing transcript of the record from the District Court on the appeal to this Court is hereby extended until October 20, 1941.

September 26, 1941.

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*Order granting leave to Interstate Commerce Commission  
to file brief Amicus Curiae, etc.*

United States Circuit Court of Appeals, Eighth Circuit

Nos. 12089 and 12147—November Term, 1941

Saturday, February 7, 1942

RECONSTRUCTION FINANCE CORPORATION, APPELLANT

vs.

BANKERS TRUST COMPANY, AS CORPORATE TRUSTEE, ETC., APPELLEE

Appeals from the District Court of the United States for the  
Eastern District of Missouri

Motion of Interstate Commerce Commission for leave to file brief as Amicus Curiae and to be heard in oral argument is called to the Court's attention. Notice of filing of motion has been filed and it appearing that there is no objection to the motion, it is ordered by the Court that leave be, and is hereby, granted to the Interstate Commerce Commission to serve on parties and to file brief as Amicus Curiae on or before March 2, 1942. Action of the Court on the motion in so far as it concerns leave to participate in the oral argument is postponed and application for such leave may be made on or before the day of argument to the Court before which these appeals will be presented.

February 7, 1942.

*Order of submission*

March Term, 1942—Tuesday, March 10, 1942

These causes having been called for hearing in their regular order upon application of Mr. Daniel H. Kunkel, counsel for Interstate Commerce Commission, leave is granted to him to participate in the oral argument and the Court extends the time for oral argument fifteen minutes to each side, appellant and appellee, so that argument by Mr. Kunkel will not deprive counsel for the respective parties of their allotted time under the Rules.

Argument was then commenced by Mr. Robert D. Evans for appellant, continued by Mr. Daniel H. Kunkel, counsel for Interstate Commerce Commission, as Amicus Curiae, and concluded by Mr. Rhodes E. Cave for appellee.

Thereupon these causes are submitted to the Court on the transcript of the record from the said District Court and the briefs of counsel filed herein.



*Opinion*

United States Circuit Court of Appeals, Eighth Circuit

No. 12062—May Term, A. D. 1942

RECONSTRUCTION FINANCE CORPORATION, APPELLANT

vs.

BANKERS TRUST COMPANY, AS CORPORATE TRUSTEE UNDER REFUNDING MORTGAGE OF THE KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Missouri

No. 12147—May Term, A. D. 1942

RECONSTRUCTION FINANCE CORPORATION, APPELLANT

vs.

BANKERS TRUST COMPANY, AS CORPORATE TRUSTEE UNDER REFUNDING MORTGAGE OF THE KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Missouri

June 10, 1942

Mr. Robert D. Evans (Mr. Russell L. Snodgrass, Messrs. Hennings, Green, Henry, and Evans with him on the brief) for appellant.

Mr. Daniel H. Kunkel (Mr. Daniel W. Knowlton, General Counsel for Interstate Commerce Commission, was with him on the brief) for Interstate Commerce Commission, as Amicus Curiae, in support of appellant.

Mr. Rhodes E. Cave (Messrs. White and Case, Thomas S. McPheters, Fitzhugh McGrew, and Herbert F. July were with him on the brief) for appellee.

Before GARDNER, THOMAS, and RIDGEC, Circuit Judges.

RIDGEC, Circuit Judge, delivered the opinion of the court.

This is an appeal from an order of a district court, in bankruptcy, making allowances for services rendered and expenses incurred by the trustee under a refunding mortgage of a railroad company in reorganization under Sec. 77 of the Bankruptcy Act.

At the time the allowance was made to the trustee under the refunding mortgage, the court had before it a plan for the reorganization of the debtor, approved by the Interstate Commerce Commission, and had made an order requiring all parties in interest to

present, within the time limits by the order, their objections to the proposed plan of reorganization, and also to file all claims for compensation for services rendered or for expenses incurred "either under Clause 12 of Subsection (c) of Section 77 of the Bankruptcy Act, or otherwise." The order also directed the clerk of the court, upon the filing of petitions for allowances under the section of the statute mentioned, to forward copies of such petitions to the Interstate Commerce Commission "for the fixing of a maximum limit or limits on the amount or amounts of the allowances to the petitioner or petitioners from the estate of said debtor."

Section 77 (c) (12) of the Bankruptcy Act is as follows:

"Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries, and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the circuit court of appeals independently of other appeals in the proceeding and shall be heard summarily. The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subsection (c) and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subsection (c)." (11 U. S. C. A. 205.)

In obedience to the order of the court, the appellee filed two petitions for allowance for services rendered and expenses incurred by it in the reorganization proceedings, one being numbered 266 and the other 267. The total amount of the allowance asked in each petition was \$26,792.16, of which \$10,000 was asked for the services of the Bankers Trust Company as trustee under the refunding mortgage, \$16,000 for fees of its counsel, and the balance for expenses.

In petition No. 266, the appellee alleged that the services and expenses for which compensation was asked had not been incurred in connection with the proceedings and plan for reorganization of the debtor. It averred that its services were rendered and expenses incurred as trustee under the refunding mortgage in the performance of its obligations as trustee and for the benefit of the trust estate as distinguished from the debtor's estate; that by the terms of the refunding mortgage it was given a first lien on all property of the trust estate, including certain cash on deposit with it as trustee; and that for the reasons stated, the court had jurisdiction to determine

the amount to which appellee was entitled without the intervention of the Interstate Commerce Commission under the section of the Statute quoted above.

Petition No. 267 was filed by the appellee in order to protect its rights, under the order of the court fixing the time for filing claims, in the event a decision of the court on petition No. 266 should be adverse to it. In this petition appellee asked compensation, under the statute, for the same services and expenses as in petition No. 266, reserving its objection to the jurisdiction of the Interstate Commerce Commission to fix the maximum limit within which its claim might be allowed, and repeating its allegations concerning its right to have its claim adjudicated exclusively by the court. This petition, in compliance with the order of the court, was referred to the Interstate Commerce Commission.

Before action by the Commission upon the second petition, appellee's petition No. 266 came on for hearing in the court, which entered an order allowing compensation in the full amount claimed. It appears in the briefs of the parties that after the hearing in the court, the Commission considered petition No. 267 and entered an order upon it, making allowances in an amount substantially less than that allowed by the court.

The mortgage under which appellee is trustee secured \$47,513,000 aggregate principal amount of bonds of the Kansas City, Fort Scott and Memphis Railway Company, a part of the system of the debtor railroad in reorganization. It was a first lien upon the main line of the debtor between Kansas City and Memphis, a second lien upon the main line between Memphis and Birmingham, and was also secured by certain bonds and common stocks and by approximately \$265,000 in cash on deposit with the corporate trustee. Appellee's claim of a lien upon the property in its hands as trustee is based upon the following provision of the refunding mortgage:

"The Trustees shall be entitled to reasonable compensation for all services rendered by them in the execution of the trusts hereby created, which compensation as well as all reasonable expenses necessarily incurred and actually disbursed hereunder, the Railway Company agrees to pay and hereby charges on the trust estate."

The mortgage further provided that in the event of a sale of the mortgaged premises by the trustee, under the power granted it, or by virtue of judicial proceedings, the proceeds realized should be applied first to the costs and expenses of the sale and to the payment of a reasonable compensation to the trustees, their agents, and attorneys.

The bankruptcy court, holding that Sec. 77 (c) (12) had no application to claims of the character presented in petition No. 266, ordered that the appellee pay to itself the full amount of its claim out of the cash on deposit with it as trustee under the mortgage. It held that under the provisions of the mortgage the amount of appellee's claim was a proper charge "on the trust estate subject to said mortgage." The court made no finding as to whether the serv-

ices rendered and expenses incurred by the appellee were in connection with the reorganization proceedings and plan, or whether they resulted in any benefit to the trust estate.

This appeal is prosecuted by the Reconstruction Finance Corporation, a party to the reorganization proceedings in the court below by intervention, and is supported by a brief filed on behalf of the Interstate Commerce Commission, as *amicus curiae*. It is urged on behalf of the appellant that the order of the lower court is erroneous in holding that the claim of the appellee was not governed by Sec. 77 (c) (12) of the Bankruptcy Act. The argument in support of this assignment of error is that the evidence establishes that the services of the appellee and its counsel were in fact in connection with the reorganization plan and proceedings within the meaning of the section of the Bankruptcy Act quoted above, and that the bankruptcy court, therefore, is without power or jurisdiction to allow the claim except within the maximum limits fixed by the Interstate Commerce Commission after reference of the claim to the Commission. With this contention we cannot agree.

It is obvious that under Sec. 77 (c) (12) of the Bankruptcy Act the allowances authorized are only those for services and expenses actually rendered and incurred in connection with the reorganization proceedings and plan, and resulting in benefit to the debtor's estate. It is also obvious that the maximum limits within which claims of the character mentioned above may be allowed by the court must first be fixed by the Commission. Nor do we doubt that the intention of the Congress in enacting this section of the bankruptcy statute was sharply to limit the administrative expenses of reorganization proceedings, nor that the bankruptcy court is without power to exceed the limits fixed by the Interstate Commerce Commission with regard to claims of the character governed by the section of the Act in question. *See* *re Chicago, M., St. P. & P. R. Co.*, 121 F. (2d) 371 (C. C. A. 7th); *In re Chicago & N. W. Ry. Co.*, 35 F. Supp. 230, 121 F. (2d) 791, 798, 799. And see *Hugg v. Crooks*, 122 F. (2d) 366 (C. C. A. 8th); *Straus v. Baker Co.*, 87 F. (2d) 401 (C. C. A. 5th); *In re Central Shorewood Building Corp.*, 90 F. (2d) 725 (C. C. A. 7th), construing similar provisions of Sec. 77B of the Bankruptcy Act, dealing with corporate reorganizations. The validity of this section has been upheld as applied to claims within the purview of the section. *In re Chicago & N. W. Ry. Co.*, 121 F. (2d) 791.

We may also agree with the appellant's contention that the debtor's estate, within the meaning of Sec. 77 (c) (12) of the Bankruptcy Act, includes all of the debtor's property, encumbered and unencumbered, *Continental Ill. Bank & Tr. Co. v. Chicago, R. I. & P. Ry. Co.*, 294 U. S. 648, 55 Sup. Ct. 595, 79 L. Ed. 1110, and that the payment of the claim out of property in the hands of appellee as trustee under the refunding mortgage is in fact payment out of the estate of the debtor. But these circumstances are not important in the decision of the present case. The claim of the appellee is not for

services rendered to the debtor's estate nor in connection with the reorganization proceedings and plan within the meaning of the section of the Bankruptcy Act relied on by appellant. Appellee's claim is based upon its contract, expressed in the refunding mortgage, and is for its services to the trust estate required by that mortgage in fulfilling its duty and obligation to the bondholders secured by the mortgage.

Under Sec. 77 of the Bankruptcy Act the bankruptcy court acquired exclusive jurisdiction of all of the property of the debtor railroad wherever situated. But it took possession of the debtor's property subject to all valid claims against it. Appellee, as trustee under a mortgage conveying a large part of the debtor's estate as security for the payment of certain bonds of the debtor, intervened in the reorganization proceedings in order to protect the rights of the bondholders. In any plan of reorganization of the debtor finally adopted, these bondholders were entitled to fair and equitable treatment, and appellee was a proper party to represent them in the reorganization proceedings. By the terms of the trust indenture it was entitled to compensation for its services rendered in behalf of the bondholders. As a general rule the trustee is entitled to compensation out of the trust estate for the services rendered and expenses incurred in the protection of the trust. *Perry on Trusts and Trustees*, Vol. 11, p. 1531; *Restatement, Law of Trusts*, Vol. I, Secs. 242, 244. *Schoenherr v. Van Meter*, 215 N. Y. 548, 109 N. E. 625; *Hallett v. Moore*, 282 Mass. 380, 185 N. E. 474. In the present case the trust estate was charged with a lien to secure the payment for the trustee's services and expenses properly incurred in the administration of the estate. As the bankruptcy court had possession of the trust estate as a part of the debtor's estate, it was necessary for the appellee to apply to that court for the allowance of its claim.

Nor is the fact that the services of appellee may have been rendered and its expenses incurred in connection with the reorganization plan and proceedings controlling on the question here. In a literal sense they were because they were made necessary by the reorganization proceedings. The officers of appellee and its counsel gave attention to the steps taken in the proceedings and attended hearings before the court and the Commission. They took part in conferences in regard to the status of the proposed plan of reorganization and in meetings held to work out new plans. But appellee was at all times acting primarily in the interest of the bondholders under the refunding mortgage. The fact that the services of appellee on behalf of the trust estate were also beneficial to the reorganization proceedings should add to, rather than detract from, its right to compensation. See cases cited above.

There is nothing in the case of *In re Chicago and N. W. Ry. Co.*, 35 F. Supp. 230, 256, contrary to the opinion expressed here. In that case the trustees under a refunding mortgage were asking compensation, not under the terms of the mortgage, but under Sec. 77 (c) (12) of the Bankruptcy Act. The court properly held that it was without



jurisdiction to allow them more than the maximum amount fixed by the Interstate Commerce Commission regardless of whether they were to be paid from the general estate of the debtor or from the property pledged to secure the mortgage under which they were trustees. On the other hand, in *Straw v. Baker Co.*, *supra*, a proceeding under Sec. 77B of the Bankruptcy Act, the court held that a trustee under a mortgage was entitled to compensation out of the property pledged under the mortgage for services to the trust estate.

No criticism is offered by appellant concerning the account of the allowance to appellee except such as may be implied in its contention that the court had no jurisdiction to make an allowance greater than the maximum amount fixed by the Commission on petition No. 267. But the Commission was measuring the reasonable value of appellee's services in the reorganization proceedings to the estate of the debtor. Appellee is not asking for compensation for that service. On the other hand it asks reasonable compensation for the value of its services to the trust estate. We find nothing in the record which would justify us in overruling the decision of the bankruptcy court upon the necessity or propriety of the services rendered by the appellee to the trust estate nor upon the value of the services rendered. We are not advised in this record of the terms of the proposed reorganization plans pending before the court nor the treatment accorded by the reorganization plan to the interests represented by the trustee. These facts and others material to the decision of the lower court, concerning which the record on appeal gives no information, were before the lower court and presumably justified its judgment in this case.

We think the claim of the appellee was within the jurisdiction of the court below to allow without the intervention of the Interstate Commerce Commission under Sec. 77 (c) (12).

The judgment appealed from is affirmed.

THOMAS, Circuit Judge, dissenting:

I think the court erred in allowing the trustee's claim under petition No. 266 without findings of fact or conclusions of law and in effect holding that Sec. 77 (c) (12) (11 U. S. C. A. 205 (c) (12)), is not controlling. This section is specifically made applicable to "trustees under indentures", and a procedure with right of appeal is prescribed for determining the amount of such claims and for their allowance. The indenture in this instance creates a lien but does not fix its amount.

In my opinion the trustee should have proceeded under its petition No. 267. Even though it claims subsection (c) (12) is unconstitutional, if applied to its claim, it nevertheless should be required to present the facts in the prescribed administrative proceeding. It could then raise, and ultimately present for judicial review, any legal question which may arise. *Anniston Mfg. Co. v. Davis*, 301 U. S. 237; *Alabama Power Co. v. Icken*, 302 U. S. 464; *Massachusetts v. Mellon*, 262 U. S. 447; *Wilshire Oil Co. v. United States*, 205 U. S. 100. It is not clear to me that a district court sitting as a court of

bankruptcy has power in a bankruptcy proceeding to ignore the statute prescribing a means for determining the amount of unliquidated and disputed claims and to act upon such claims outside the statute.

Even if this court should hold that subsection (c) (12) is not applicable and that the court should properly allow claim No. 266, then the case should be remanded for findings of fact and conclusions of law by the bankruptcy court. See *Kelso v. Maclaren, Trustee*, 8 Cir., 122 F. 2d 867, and *Order 47 of General Orders in Bankruptcy*, 305 U. S. 681, 702.

*Judgment*

United States Circuit Court of Appeals, Eighth Circuit

May Term, 1942—Wednesday, June 10, 1942

No. 12089

RECONSTRUCTION FINANCE CORPORATION, APPELLEE

vs.

BANKERS TRUST COMPANY, AS CORPORATE TRUSTEE UNDER REFUNDING MORTGAGE OF THE KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY

Appeal from the District Court of the United States for the Eastern District of Missouri

No. 12147

RECONSTRUCTION FINANCE CORPORATION, APPELLANT

vs.

BANKERS TRUST COMPANY, AS CORPORATE TRUSTEE UNDER REFUNDING MORTGAGE OF THE KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY

Appeal from the District Court of the United States for the Eastern District of Missouri

These Causes came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and were argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the order of the said District Court appealed from in these causes be, and the same is hereby, affirmed with costs; and that the Bankers Trust Company, as Corporate Trustee under Refunding Mortgage of the Kansas City, Fort Scott and Memphis Railway Company, have and recover against the Reconstruction

Finance Corporation, the sum of Twenty Dollars for its costs herein and have execution therefor.

JUNE 10, 1942.

*Clerk's certificate*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States in certain causes in said Circuit Court of Appeals wherein the Reconstruction Finance Corporation was Appellant, and the Bankers Trust Company, as Corporate Trustee under Refunding Mortgage of the Kansas City, Fort Scott, and Memphis Railway Company, was Appellee, No. 12089, and wherein the Reconstruction Finance Corporation was Appellant, and the Bankers Trust Company, as Corporate Trustee under Refunding Mortgage of the Kansas City, Fort Scott, and Memphis Railway Company, was Appellee, No. 12147, as full, true and complete as the originals of the same remains on file and of record in my office.

I do further certify that on the twenty-ninth day of July, A. D. 1942, a mandate was issued out of said Circuit Court of Appeals in said causes, directed to the Judges of the District Court of the United States for the Eastern District of Missouri.

In Testimony Whereof, I hereto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 21st day of August, A. D. 1942.

[SEAL]

E. E. KOCH,

*Clerk of the United States Circuit  
Court of Appeals for the Eighth Circuit.*

Supreme Court of the United States

No. 387, October Term, 1942

*Order allowing certiorari*

Filed October 26, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

## Supreme Court of the United States

No. 388, October Term, 1942

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